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## APPENDIX

(Volume I, Page 1385)

Supreme Court, U.  
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### IN THE Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1285

WILLIAM B. SAXE, ATTORNEY GENERAL OF THE UNITED STATES, and NORMAN A. CARLSON, DIRECTOR, UNITED STATES BUREAU OF PRISONS,

*Petitioners*

THE WASHINGTON POST Co. and BEN H. BASHKIAN

ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

FOR A WRIT OF HABEAS CORPUS FROM FEBRUARY 12, 1974  
CIRCUIT COURT GRANTED HABEAS A 1974



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1973

No. 73-1265

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**WILLIAM B. SAXBE, ATTORNEY GENERAL OF THE UNITED STATES, and NORMAN A. CARLSON, DIRECTOR, UNITED STATES BUREAU OF PRISONS,**

*Petitioners*

—v.—

**THE WASHINGTON POST Co. and BEN H. BAGDIKIAN**

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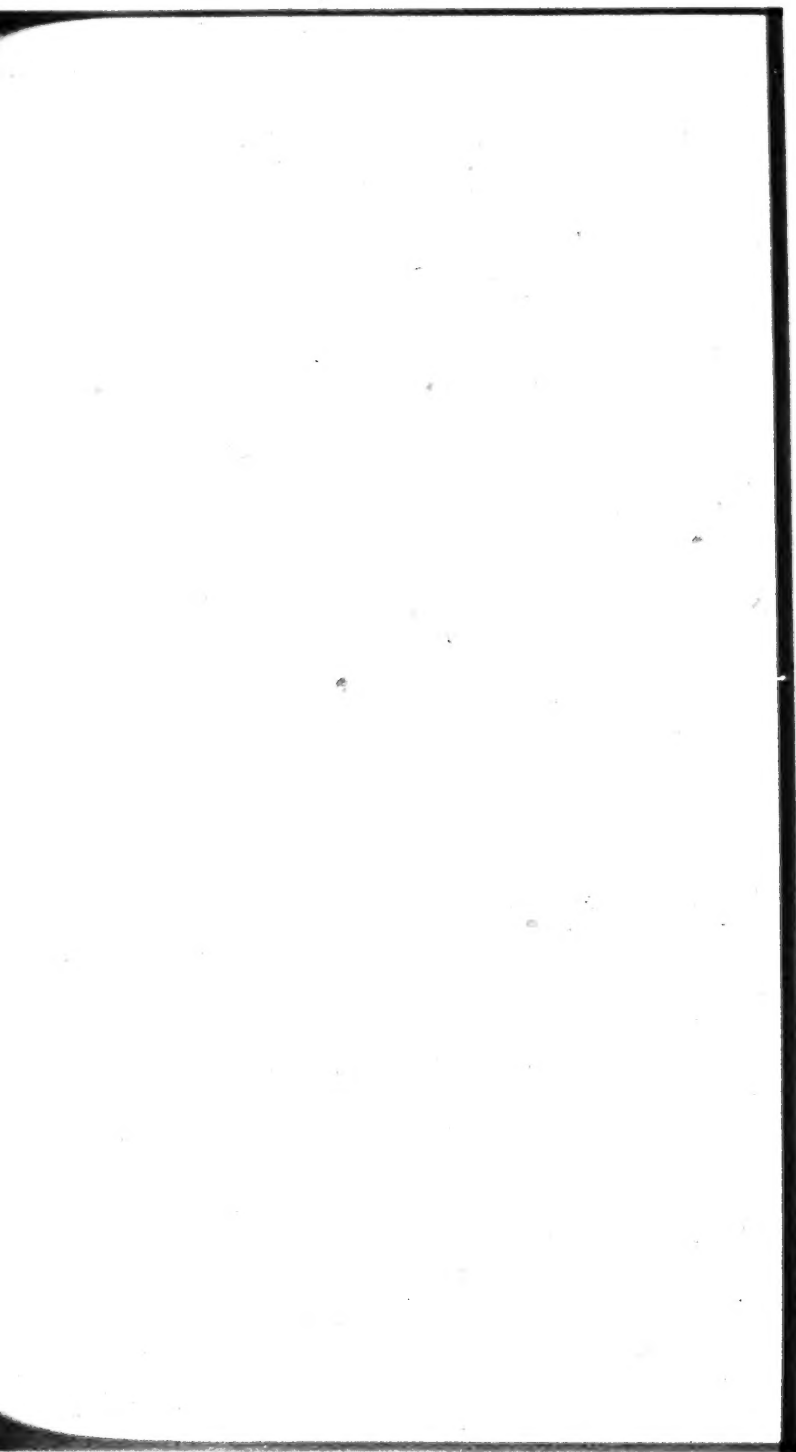
ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1972	Deposit for cost by
Mar. 10	Complaint, appearance; Exhibits A thru F filed
Mar. 10	Motion of pltfs. for order to show cause and for a preliminary mandatory injunction; P&A; c/s 3-10-72; M.C. filed
Mar. 13	Hearing on motion for temporary restraining order; Memorandum denying interim temporary relief; setting hearing on preliminary injunction for 2-23-72 at 9:30 A.M. (N) (Rep: C. Bryholdt) Gesell, J.
Mar. 13	Affidavit of Norman A. Carlson with attachment. filed
Mar. 15	Motion of pltfs. for preliminary injunction; c/s 3-15; M.C. filed
Mar. 17	Transcript of proceedings, March 13, 1972, pages 1-45; reporter: Katherine K. Byrholdt, Court's copy. filed
Mar. 21	Points & Authorities by defts. in opposition to motion for preliminary injunction; appendix A, B & C; c/m 3-21. filed
Mar. 23	Motion for preliminary injunction heard and taken under advisement. (Rep. Watson) Gesell, J.
Mar. 29	Motion of pltffs. to re-open record for receipt in evidence of additional exhibit; affidavit; memorandum; c/s 3-29-72 MC.

## RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1972	
Apr. 5	Memorandum Opinion constituting the Court's findings of fact and conclusions of law denying motion of pltf. for mandatory or other emergency relief and denying motion of pltf. to reopen the record. (Order to be presented) (N) Gesell, J.
Apr. 10	Transcript of proceedings, March 23, 1972; court rep: I. Watson, Court's copy. filed
Apr. 12	Declaration finding portions of Bureau of Prisons Policy Statement 1220.1A in violation of the First Amendment of constitution and that press has right to interview inmates of Federal Correctional Institutions with certain exceptions; Order enjoining Federal Bureau of Prisons; directing issuance of new rules governing press interview within 30 days; directing defts. to grant press interviews, with exceptions, between date of this order and issuance of new rules. (N) Gesell, J.
Apr. 14	Motion of defts. for a stay of the Court's order of 4-11-72 heard and denied. (Rep: P. Harper) Gesell, J.
Apr. 14	Order denying application of defts. for a stay of Court's order of 4-11-72. (Rep: P. Harper) Gesell, J.
Apr. 14	Notice of appeal by defts. from order of April 11, 1972; copy mailed to Joseph A. Califano, Jr. filed
Apr. 14	Motion of Government for stay of Court's order of 4-11-72 heard and denied. (Rep: P. Harper) Gesell, J.
Apr. 14	Order denying oral application of defts. for a stay of Court's order of 4-11-72. (N) (App/N) (Rep: P. Harper) Gesell, J.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

[Received Mar. 14, 1972, Docket Unit, Civil Division]

THE WASHINGTON POST CO. and BEN H. BAGDIKIAN,  
PLAINTIFFS

v.

RICHARD G. KLEINDIENST, Acting Attorney General of  
the United States and NORMAN A. CARLSON, Director,  
United States Bureau of Prisons, DEFENDANTS

DISTRICT OF COLUMBIA ) ss:

COMPLAINT FOR DECLARATORY, MANDATORY,  
AND INJUNCTIVE RELIEF

1. This action for declaratory and injunctive relief arises under the First Amendment to the Constitution of the United States. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars (\$10,000). This court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1361 and 2201, 2202.

PARTIES

2. Plaintiff Washington Post Co., a Delaware Corporation doing business in Washington, D. C., publishes *The Washington Post*, a newspaper with a daily circulation in excess of 500,000 in the Washington Metropolitan Area and throughout the United States. It participates in a number of news services which result from time to time in the republication of Washington Post articles in other newspapers throughout the United States.

3. Plaintiff Ben H. Bagdikian is a reporter and an Assistant Managing Editor employed by Plaintiff Washington Post Company. He is a specialist in reporting on



prisons, and has published in The Washington Post a comprehensive series of articles on prisons, in America, copies of which are attached as Exhibit A hereto.

4. Defendant Richard G. Kleindienst is the Acting Attorney General of the United States and as such has control over the policies and practices of the United States Department of Justice and of the United States Bureau of Prisons as a concomitant agency thereof.

5. Defendant Norman A. Carlson is Director of the Federal Bureau of Prisons and as such also has control over the policies and practices of the United States Bureau of Prisons.

### CAUSE OF ACTION

6. On or about February 14 or 15, 1972, there began a wave of strikes by inmates of federal prisons at Lewisburg, Pennsylvania; Danbury, Connecticut; Marion, Illinois; and perhaps elsewhere in the United States. (See Bagdikian Affidavit, attached as Exhibit B hereto).

7. On March 1, 1972, after receiving numerous letters and indirect reports about these strikes and other events at said federal prisons, plaintiff Bagdikian in a telephone conversation with defendant Carlson requested permission from him to interview inmates at the Lewisburg and Danbury Penitentiaries. Defendant Carlson refused permission. (Exhibit B, Paragraph 4.)

8. On March 2, 1972 plaintiff Bagdikian renewed his request to Mr. Carlson in writing. (See Exhibit C hereto.)

9. On March 2, 1972, defendant Carlson wrote to plaintiff Bagdikian, again denying the the request, and citing Bureau of Prisons' Policy Statement 1220.1a (February 11, 1972) (See Exhibit D hereto).

10. Since March 2, 1972, plaintiff Bagdikian has continued to receive letters and indirect reports alleging that a peaceful work stoppage is still in progress at Lewisburg and Danbury; that prison officials are engaging in large scale reprisals against striking prisoners and their prisoner-representatives contrary to previous undertakings that they would not do so; and that publicly

reported statements of prison officials about the events at Lewisburg and Danbury are inaccurate or untrue. (Exhibit B, paragraph 5.) As recently as March 9, 1972, plaintiff Bagdikian has received a letter from an inmate at Lewisburg urging him to investigate the situation there "as soon as possible" (See letter attached at Exhibit E).

11. The defendants' policy prohibiting newsmen from interviewing prisoners at Lewisburg and other federal prisons has resulted in a virtual blackout of news about events and conditions at those prisons. (See Exhibit B, paragraph 6.)

12. Federal prisons are governmental institutions of great concern to the American public. They are supported by tax revenues, are administered by public officials, including the defendants herein, and serve as places of incarceration for persons convicted of crimes in federal courts. Federal prisons are created by and are ultimately subject to regulation and reform by the United States Congress and the President of the United States. Events such as those presently occurring at Lewisburg and Danbury are, therefore, newsworthy and of great importance to the public within the meaning of the First Amendment to the United States Constitution.

13. A substantial segment of the American public, and a large number of Congressmen and other federal officials, rely on *The Washington Post* to supply them with information on matters of public importance.

14. In denying plaintiff Washington Post Co.'s employee, plaintiff Bagdikian, permission to interview prisoners at Lewisburg Penitentiary, defendants violated the First Amendment rights of both Plaintiffs to gather information for the purpose of reporting it to the American public and the First Amendment rights of the public to have the press obtain and publish such information.

15. The aforesaid violation of the First Amendment rights of plaintiffs and the public has caused and will continue to cause the plaintiffs and the public immediate, grave and irreparable injury by preventing plaintiffs from gathering contemporaneous information, and reporting to the public, about significant news events relating to federal prisons.

16. In contrast to defendant Carlson's present insistence that Bureau of Prisons' regulations prohibit interviews of inmates by newspaper reporters, plaintiff Bagdikian and other reporters have on various occasions in the past interviewed inmates at federal prisons with the knowledge and approval of Bureau of Prisons' Officials. Thus defendants have, in violation of the First Amendment, arbitrarily, capriciously, and without adherence to reasonable standards decided whether or not to permit reporters to interview prisoners according to their inclinations as to whether permitting such interviews will or will not further their own interests at the time in question.

17. As federal officials responsible for promulgating and effectuating the policies and practices of the Bureau of Prisons governing access by reporters to federal prisons and to inmates in those prisons, the defendants are obliged to promulgate and to enforce even-handedly only regulations, policies and practices which are consistent with the requirements of the First Amendment. Contrary to their obligations under the Constitution of the United States, the defendants have failed and refused to do so.

18. Plaintiffs have no adequate remedy at law other than to bring this action for declaratory, mandatory and injunctive relief.

### PRAYERS FOR RELIEF

WHEREFORE, plaintiffs pray:

(1) That the Court declare that the conduct of the defendants in refusing to permit plaintiff's Bagdikian and plaintiff Washington Post Co. to interview inmates of the federal penitentiaries at Lewisburg, Pennsylvania and Danbury Connecticut without intimidation or censorship by prison officials and thus outside the hearing of prison officials is in violation of the First Amendment to the United States Constitution; that plaintiff Bagdikian and the plaintiff Washington Post Co. have a right under the First Amendment to conduct such interviews;

and that the public has a right under the First Amendment to have plaintiffs conduct such interviews.

(2) That the Court declare that the conduct of the defendants in exercising arbitrarily and capriciously their power to permit or refuse interviews or prison inmates by reporters without regard to any reasonably clear standards governing the exercise of such power is in violation of the First Amendment to the United States Constitution; and that defendants are obliged to prepare and promulgate—and to enforce even-handedly—regulations governing access by reporters to inmates of federal prisons who are willing to be interviewed, without regard to any desire by the defendants or their subordinates to suppress adverse publicity or criticism at any given time;

(3) That the Court declare that the regulation or policy of the Bureau of Prisons prohibiting reporters from interviewing identifiable prisoners is in violation of the First Amendment to the United States Constitution; and that the defendants are obliged to permit reporters to interview inmates at federal prisons who agree to be interviewed, and to identify such inmates who wish to be identified.

(4) That the Court order the defendants to permit plaintiff Bagdikian or other reporters employed by plaintiff Washington Post Co. to interview inmates of the federal penitentiaries at Lewisburg, Pennsylvania and Danbury, Connecticut without intimidation or censorship by prisons officials and thus outside the hearing of prison officials.

(5) That the Court order defendants to prepare, promulgate, and enforce even-handedly regulations consistent with the First Amendment governing access by reporters to inmates of federal prisoners who are willing to be interviewed;

(6) That the Court enjoin defendants from enforcing any regulation, policy, or practice which would prohibit reporters from identifying inmates whom they have interviewed, where such inmates are willing to be identified.

(7) That the Court grant such other and further relief as the Court may deem appropriate.

Respectfully submitted,

WILLIAMS, CONNOLLY & CALIFANO

By /s/ Joseph A. Califano, Jr.  
JOSEPH A. CALIFANO, JR.

/s/ Richard M. Cooper  
RICHARD M. COOPER

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shame. No civilized society should  
allow it to continue."

Norman Carlson, director of the U.S.

showing "no stiffened society" should allow it to continue."

Noriman Carlson, Director of the U.S. Bureau of Prisons: "Anyone not a criminal will be when he gets out of jail."

But the chance is glacial. In most places there is no change at all.

The system is hardly a true system, but a disjointed collection of buildings and jurisdictions. The smallest is the federal—generally accepted as the more carefully designed, if bureaucratic.

On any given day the prisoner population in federal prisons is about 20,000, or less than 10 per cent of all sentenced prisoners in the country.

See PRISON, A16, Col. 1

# Prisons Have Various Goals—Some Contradictory

## PRISON, From A1

The states have 200 facilities, ranging from the big state penitentiaries to an association of a few houses, factories, camps and juvenile halls, ranging from some of the most humane in the country to some of the worst. They hold over 200,000 prisoners each day.

There are 4,037 jails and uncounted city and town lockups where the large in conditions run from fairly good to filthy and dangerous. Technically, "jail" is a place where a person is held awaiting trial, "prison" where he serves a sentence.

The country jails hold about 161,000 persons a day, 5 per cent of them juveniles (usually mixed with adults) and 3 per cent women. In the jails, the total incarcerated population is about 1 million. If one includes town "drunk tanks," 3 million Americans pass through cells each year.

Who are the Americans who find themselves bound away?

They are overwhelmingly the poor, black and the young. A profound sense of being cheated runs through them. They may have been cheated by the environment they grew up in, by chaotic families, poor neighborhoods, ineffective schools, depressing career opportunities, but this is not the usual reason the average prisoner feels cheated. He feels that he has been unfairly treated by the criminal justice system. He is right.

### A Tiny Minority of Lawbreakers

The President's Crime Commission in 1967 showed that from 3 to 10 times more crime is committed than is ever reported to police. They cite a survey showing that in a sample of 1,500 persons of all racial levels, 91 per cent admitted committing acts for which they might have been imprisoned but were never caught. So most lawbreakers are never caught.

If they are, the affluent tend to avoid imprisonment. The concentration in prison of the poor, the black and the young reflects, among other things, a racial selection by which the odds are whittled down to put behind bars.

Once found guilty, the fate of a sentenced man is subject to the vicissitudes of fate. Robert Apahiana sold a matchbox of marijuana and happened to find himself in a particular courtroom in New Orleans where he was sentenced to 30 years in prison; hundreds of others have done the same thing elsewhere and not gone to prison.

So every prisoner knows other offenders who received substantially better treatment than he did. He knows, and statistics prove, that justice is not even-handed.

Once committed to prison, he is still governed by chance. The building he is in may be a jail or old fortress with four men in a narrow, dark and damp cell, or he may be in a clean one, one man to a cell. More than a quarter of all prisoners are in prisons 70 years or older.

If he is in Delaware, the state will spend \$12.71 a day on his food and custody; if he is in Arkansas, \$12.5 a day. If he is in Pennsylvania he will get meat and three vegetables almost every meal; if in South Carolina, meat once a week and other times greens and beans.

In some prisons he will be raped homo-sexually unless he is afraid and has a weapon; in others he will be left alone. In some, the guards will abuse him and then turn over to sympathetic or terrorizing fellow inmates, and ceases his bid to make sure he gets no word of it to the outside. In other prisons he will be treated humanely and can appeal punishments to an impartial board, including inmates, and communicate with the free world.

The people on whom such uncertain

justice is visited are men, women and children who already have been unlucky. At least half have been involved in drugs or alcohol. They are generally of normal intelligence (the median for federal prisoners is 102 I.Q.; for a typical Midwest state, 98.78) but they test out between 7th and 8th grade achievement.

In a typical state 25 per cent are in for burglary, 23 per cent for larceny, 13 per cent for robbery, 5 per cent for forgery, 6 per cent for assault, 5 per cent for drugs, 5 per cent for auto theft, 4 per cent for homicide, and 2 per cent for some sex offense.

### The Protection of Society

The President's Crime Commission showed that in 1963 there were 2,700,000 serious crimes reported to police and 757,000 arrests made and of these 63,000 people imprisoned. Thus just for reported crime, which is a minority, only 2 per cent of criminals went to prison. If they were all released they would not materially increase the law-breaking population.

If they were released the prisoners conceivably could affect the crime rate in another way: by encouraging others wise inhibited people to commit crimes because they felt they would not be punished.

But nobody knows this or can even guess intelligently.

For all the public clamor about crime and punishment, this field remains a wasteland of research, the most remarkable void of reliable analysis of any major institution in American life. The word void is prison and prison, prisons where, in the words of one administration, "we are sorting marbles in the dark." The American prison system is a monument to mindless procedures in the midst of a society that prides itself on being scientific and measuring everything in steel.

Past 1/30/72



The result is that the lives of millions of prisoners, the billions of dollars spent on them (about \$1.5 billion this year), the salary of citizen from crime and the loss of \$20 billion to victims of crime, continue to be governed by archaic conventional wisdoms. The only thing we are fairly certain of is that most of these conventional wisdoms are wrong.

It is one of the conventional wisdoms that the current use in crime is strongly influenced by excessive leniency by prosecutors and courts. Another is that harsh punishment will reduce crime. J. Edgar Hoover told a recent Senate committee, "The difficulty is with district attorneys who make deals and judges who are too soft. Some are bleeding hearts."

According to the FBI, from 1970 to 1965 the crime rate per 100,000 rose 35 per cent. Beginning in 1964, federal courts and most state judges began giving out longer sentences. From 1964 to 1970, federal sentences became 38 per cent longer and time served was even more because the federal parole board began reducing paroles. California's sentences have risen 50 per cent.

But from 1965 to 1970 the national crime rate—during the hushier period, 1960-64—rose 60 per cent.

Robert Martinson studied every report on treatment of prisoners since 1945 and analyzed the 231 studies. He concluded:

"... There is very little evidence in these studies that any prevailing mode of correctional treatment has a decisive effect in reducing recidivism of convicted offenders. 'Rehabilitation' refers to crimes committed by released prisoners.

James Folsom of the National Council on Crime and Delinquency, and Gerald S. Smith, of the University of Utah, made one of the most rigorous analyses of various treatment of American prisons and concluded:

"It is difficult to escape the conclusion that the act of incarcerating a person at all will insure whatever potential he has for a crime-free future adjustment and that, regardless of which treatment are administered, we do not know how to prevent crime. If we do know, he is in prison, the better he is kept there the more he will deteriorate and the more likely is it that he will recidivate."

#### A Conflict of Motives

A fundamental reason for confusion is that unlike some countries, the United States has never decided what it wants its prisons to do. There are several motives for criminal punishment:

1. Hurting the prisoner so that he will feel free of guilt, having paid for his act;
2. Using the criminal as a scapegoat for others in society who feel the same criminal impulses within themselves and by punishing the criminal purge themselves;
3. The need of some to feel morally superior by sustaining outcasts in a despised and degraded condition;
4. Keeping the criminal out of circulation;
5. Revenge imposed by the state to prevent the victim or his family from taking private revenge, as in family feuds;
6. Revenge in the name of all society so that the public will not impose its own version of justice, as in lynch mobs;
7. Deterrence of the criminal who, by being hurt, will decide that committing the crime is not worth it;
8. Deterrence of others who, seeing the criminal suffer, will not imitate his crime; and
9. Reforming the criminal so that he will learn to live in peace with society.

Criminal punishment may accomplish a number of these objectives simultaneously. But some are contradictory and cannot be done together. It is not possible to cause a man to respect those who treat him with deliberate cruelty. Scapegoating does not eliminate the illicit impulse; where punishment of the individual is violent and cruel, it promotes violence and cruelty in society at large.

The confusion in goals for prison has its roots in a curious phenomenon: the most damaging practices in criminal justice were started as humanitarian reforms.

The prison itself is an American invention created out of genuine compassion.

For centuries, people were incarcerated only until the local lord or king could impose punishment. Punishment would then be death by hanging, drowning, stoning, burning at the stake, or beheading, usually with a large crowd observing to deter them from imitation.

#### A Place for Penitence

In the 1780s, the Quakers of Philadelphia, taking soup to the jails, were appalled by conditions. They organized to pass laws substituting sentences of incarceration in permanent, well-designed prisons as a substitute for death, mutilation or flogging.

They designed the new prisons for solitude and meditation on the prevailing theory that men do wicked things because the devil has invaded them and only through contemplation of their sins could they become penitent and innocent again. The new institutions for penitence were called penitentiaries. The prisoners were forbidden to speak and saw no one, sometimes not even their jailers.

Europeans studying the new country reported on the new institution and adopted it, though some, like De Tocqueville and Dickens, observed that penitentiaries often produced insanity.

Part 1/35/72

In the late 1960s, it was observed that country people on their farms had been law-abiding but after they moved to the impoverished industrial cities they became criminals. It was thought that there might be some connection between environment and crime, that prisons might be a way to counteract bad environment.

The impact of Freud and psychology complicated the view of human behavior, adding to the physical environment the emotional history of the individual. If prison was an opportunity to change the environment, it might also be a place to give the prisoner a more accurate view and control of himself.

But the conflicts have never been resolved between punishment and "treatment," between the purpose of protecting society by keeping the criminal locked up and the goal of protecting society by trying to condition him for peaceful return to the community.

#### The Usefulness of "Industries"

Only this continuing confusion could explain the survival of irrationalities like "prison industries" and the decisions of parole boards.

Most work inside federal prisons, for example, is done for an independent corporation called Federal Prison Industries, Inc. It has a board of directors mostly of executives of private corporations who serve without pay. It maintains 52 shops and factories at 22 federal institutions where it employs about 25 per cent of all federal prisoners.

Historically, at the insistence of private business and labor unions (George Meany, head of the AFL-CIO at one time on the board of FPI), they do not make goods that will compete with privately made goods, which means that they usually do not do any skills that will let the ex-convict compete in private industry after he gets out.

The chief customer is the federal government. Pay rates are from 10 to 47 cents a day.

FPI in 1976 had a net income of \$90 million on \$58 million in sales, or 17 per cent profit on sales, the highest of any industry in the United States (average for all U.S. industry is 4.5 per cent on sales, the highest being the mining industry at 11 per cent).

FPI has proudly announced that it declared a dividend every year since 1946 and that these dividends total \$62 million. To whom was this dividend on captive labor issued? The American taxpayer—the general treasury of the United States.

Federal prison officials agree that a major reason for repeated crime by ex-convicts is their lack of skill in the jobs that are needed in free life—medical and dental technicians and other categories that will hire all the qualified help they can get. They also admit that they lack the money to train sufficient numbers of convicts in these marketable skills. Yet they have regularly turned back large profits made by prisoner labor.

#### The Effects of Parole

Even prison industries cannot match the performance of parole boards for lack of success and lack of accountability. Parole is another humanitarian reform that was perverted. It was supposed to give the prisoner incentive to improve himself to earn a release earlier than his full term. It was supposed to shorten time spent behind bars. It has backslid.

Several sentences on the assumption that most prisoners will be released in something like one-third their time. The prisoners have not been released at that rate. Consequently, American prisoners serve the longest sentences in the Western world.

But that is not the worst characteristic of American parole boards. Their purpose is to release the prisoner as soon as possible consistent with his own good and protecting society from repetition of crime. The boards are in the position of predicting human behavior, a difficult task for even the most perceptive and wise individuals.

Most parole boards are appointed by governors and include his cronies or former secretaries.

Parole boards regularly release the worst risks, as measured by the best data.

Take the case of Jack Crowell (not his real name, but a real person). He is a stocky, 41-year-old Navy veteran doing 10 years for voluntary manslaughter in a Southern state. He had such a good record in the state penitentiary that toward the end of his sentence he was permitted to join the state's work release program.

Under work release he left prison to live in an unlocked dormitory in a city. He got up each morning, drove his boss's truck to work site where he became a master plumber, supervising an assistant. At the end of the day he returned to the dormitory. He earned \$140 a week and had saved \$100. He applied for a parole. The prison system recommended him. He was turned down.

Typically they didn't tell him why except that he wasn't "ready." They did parole some men direct from the state prison who had never had a chance to show that they could hold a good job and handle freedom.

#### Who Are the Worst Risks?

Crowell's is a typical case. One can guess what happened. He was in for manslaughter. Parole boards do not like to parole killers and sex offenders because it makes for bad public relations. They fear the headlines if such men repeat crimes while on parole. But contrary to conventional wisdom, murderers and sex offenders are the most likely not to repeat a crime.

In 1969 parole boards reporting to the Uniform Parole Reports released 23,563 prisoners before they completed their full sentences. Almost one-third of them were burglars who in their first year had their usual rate of repeated crime of 31 per cent. There were 2,870 armed robbers released and in the first year 27 per cent went back to prison. The boards released 2,417 forgers, 30 per cent of whom were re-imprisoned, and they released 2,292 larcenists, of whom 30 per cent went back for various violations. Murderers and rapists released had failure rates of 11 to 17 per cent.

These are the failure rates for various offenders as compiled by the most authoritative group, the Uniform Parole Reports of the National Probation and Parole Institutes of the National Council on Crime and Delinquency:

Negligent manslaughter	11%
Statutory rape	12
Forcible rape	15
Forcible rape	17
All other sex offenses	17
Aggravated assault	22
Armed robbery	27
Unarmed robbery	30

Crimes are failure rates for the first year on parole; the rate for offenders as the group is out longer but the rank order does not change significantly over the years.)

It appears reasonable for parole boards to be more cautious in releasing violent men. Even if burglars repeat their crimes, theft of property is less harmful to society than killing and raping. But here, too, the data do not support the parole boards: murderers and rapists on their second offense do not commit as many added murders and rapes as do other kinds of criminals. Of 30 cases of willful homicide that sent 1969 parolees back to prison in their first year of freedom, 24 were committed by people not originally in for willful homicide. Six released murderers went back to prison for another killing, but nine burglars went back for murders.

The 511 forcible rapists on parole, to take another example, committed four new forcible rapes; burglars during their paroles committed eight. All men whose original conviction was for property crimes while on parole committed 12 forcible rapes.

The rate of new homicides and rapes by all categories of released prisoners is about the same, approximately one-half of 1 per cent. Since murderers and rapists represent a small proportion of all released prisoners, about 12 per cent for all such categories, their one-half of 1 per cent represents less of a threat to society than do the violent new episodes by other kinds of criminals.

Because they regularly release the worst risks, parole boards would do better picking parolees at random.

Parole boards are not solely in blame. Whatever other notions are in their heads when they make their decisions, they are seriously influenced by public opinion. The police and the general public are outraged at the violent crimes of released prisoners; they don't know that 97 per cent of all prisoners are released anyway and that the longer criminals stay in prison, the more crimes they commit afterwards.

#### The Torture of Uncertainty

In prison after prison, the uncertainty of the sentence was mentioned as the most excruciating part of prison. "Give me a fixed sentence anytime," is common.

Or, "I behaved myself, the warden recommended me, I had a job on the outside, my family said they had a place for me and they turned me down. I ask them why and they say, 'You're not ready.'"

"I ask them what that means and they don't say. What am I supposed to do? Give me five, five me ten but let me know how much time I have to do and don't keep me hanging all the time."

Society takes elaborate pains to assure that lawyers and judges are qualified to exercise their power over the freedom of their fellow citizens and that no person is deprived of his liberty without due process of law, including a review of parole decisions. Yet the greatest of decisions—a majority of the time a citizen may spend imprisoned—is determined most of the time by untrained persons acting without adequate information in opposition to the best data and without accountability.

Rec'd 1/30/77

During the last few years, the federal parole board has reduced paroles by 20 per cent.

In Louisiana, they stopped giving all convicted armed robbers parole, after which armed robberies in the state rose 57 per cent.

It is tragic for the protection of society and the future success of prisoners that carefully selected boards do not use the best available data to decide the issue of liberty or imprisonment. It unnecessarily exposes society to more crime, it stunts the potential for change within convicted criminals and it suffuses American prisons with frustration and bitterness.

#### The Least Skilled Institution

What remains after the available data on criminality are sifted is the remarkable absence of other good data on American prisons and their effectiveness. Prisons would seem to be ideal laboratories for social scientists -- controlled populations in a variety of conditions, available to be measured and compared. But they remain the least scientifically studied of any major American institution.

George Solecky, associate director of the California Youth Authority, was asked why it is that a society apprehensive about crime, and a country anxious about criminals, did not insist on rigorous study and analysis.

"Wall a minute," Solecky said, "Wait a minute. Who said society was concerned? Who said they give a damn? They want some people put away and then they want to forget about them."

Why don't prison administrators themselves look carefully at their own results? George Hefo, director of Texas prisons, says:

"I know of no institution unless it be organized Christianity which has shown a greater reluctance to measure the effectiveness of its varied programs than has corrections."

The answer seems to be that what happens to prisoners inside American prisons has very little to do with the prisoners themselves or what will happen to them after they are released into the free world. The state of prisons seems mainly determined by the values of the American citizen who considers himself law-abiding.

John Irwin served five years in Soledad Prison for armed robbery. He is now a college professor at San Francisco State College, specializing in penal studies. He says:

"The radicals talk of abolishing punishment, but they really want to start punishing a new population of 'capitalist pigs.' The liberals want punishment but call it 'treatment.' The conservatives are the only ones honest about it, but they want such disproportionate amounts that it's crazy."

It is hard to avoid the conclusion that what goes on inside American prisons tells more about the character of people outside the walls than it does about the inmates inside.

Next: Inside an American penitentiary

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# No. 50061, Inside Maximum Security

## Six Days in State Prison Through the Eyes of a Murderer

Second of eight articles.

By Ben H. Bagdikian  
Washington Post Staff Writer

The aging forger slid over the bench where we were watching television.

"Did you really do it?"

"Do what?"

"You know. The murder."

I looked at him in astonishment. Prisoners don't say things like that to each other. It's the kind of question a clumsy informer asks.

"No," I told him calmly. "I didn't."

It was true. I was in a maximum security penitentiary for murder. But I hadn't killed anyone. No one at the prison—warden, guards, inmates—knew that. All they knew was that one night, two state policemen delivered me in handcuffs as a "transfer" from a distant county jail.

Huntington State Correctional Institution is a fortress behind high brick walls and gun towers in the mountains of central Pennsylvania. It was designed to make sure that no man would break out. It had been hard for me to break in, but finally I was here, in crumpled institutional uniform, Prisoner No. 50061, sitting in Cell

Block A with my fellow inmates—murderers, rapists, armed robbers, forgers, burglars.

For three months, I had looked at the American prison system as an outsider, observing men behind bars and talking about them the way a tourist visits a zoo. Prison experts agreed that perception of what it means to be imprisoned in America remains dim unless you are on the other side of the bars. They were right. Months of interviewing prisoners, former prisoners,

### The Shame of the Prisons

corrections administrators and research scientists, as well as reading dozens of books and reports, had not prepared me for the emotional and intellectual impact of maximum-security incarceration.

On the night of Friday, Dec. 17, two undercover Pennsylvania state policemen delivered me to the state penitentiary.

When they were gone, there was no one inside the prison who knew that I was not really Benjamin Barsam.

ian," county prisoner awaiting grand jury action for murder.

A trusty, an older prisoner, led me to cell No. 114. The door didn't close behind me with a "clang" as it does on television. It clicked. Firmly.

The cell has no window. It is about seven feet by eight, with a steel cot, small wooden table and chair, a metal shelf on the wall. In one corner near the door there is a porcelain toilet, a sink with spring-loaded push-buttons for hot and cold water. Above that a square of shiny metal is riveted to the wall for a mirror.

Two sheets and blankets are on the cot. I make up the bed. The mattress is about an inch thick.

A guard puts a piece of paper on my cell door. "That has your name on it—in case you get lost."

The only light inside the cell is a square fixture above the door, aimed into the cell, casting a pale, yellow light into the eyes.

The corridor lights go dim. A turnkey comes by to double-lock each cell door for the night.

See ELSONS, A12, Col. 1



# Inside a Pennsylvania Prison

## PRISONS, From A1

Suddenly I am very tired. I remember that I didn't have dinner. There is nothing to read and nothing in my pockets. It is hard to sleep.

The new sounds fill the mind. Unseen prisoners snore or call out in their sleep. Periodically, someone is heard urinating, followed by the explosive flush. Or there is the percussive bang of the faucet springs in the sinks. The telephone on the guard's desk rang all night. From time to time there is a quick footstep as a guard shines a flashlight flashlight into the cell for bed checks.

Sleepless, I experience the first surprise of imprisonment: It is difficult mentally to create the outside world. The prison is so drained of normal values that it is hard to connect, even in the imagination, the reality of inside with the strangely remote reality of outside.

It takes a conscious act of will to recreate the events of that same day, infiltrating a prison.

The day started with a normal morning at The Washington Post; lunch in a favorite Washington restaurant with a favorite person; driving to Pennsylvania in the late afternoon with the long, yellow light of the setting sun lying gently on the golden stubble of cornfields and the still-green meadows; being stopped by a Pennsylvania state trooper for speeding and being unable to tell him I was late for my imprisonment for murder, and later laughing at myself for driving to the penitentiary in a rented automobile. In my cell, it is hard to make vivid memories that only four hours earlier I was in the Pennsylvania State House in Harrisburg, in the office of Attorney General J. Shane Creamer, who made the imprisonment possible and who, with his top assistants, gave me a rapid-fire briefing on my cover story. And the cold, two-hour drive from State House to state pen, arguing the pros and cons of capital punishment with the two undercover state policemen.

I worry for a moment if my project has been secret enough. Weeks earlier I was about to enter the Oklahoma State Penitentiary at McAlester when an ex-convict visited me and said, "You'll never get out alive. Too many people know about it and the grapevine down there has picked it up."

A prisoner entering under false pretenses is automatically assumed to be a planted informer, an occupation with high mortality rates.

I also make sure that I remember Creamer's private home phone number, the only thing I might use in a jam to convince a guard that I'm not a real prisoner. A week earlier as we left Creamer's living room he asked Allyn Bieloff, his director of corrections, whether in the event that trouble developed at the prison I couldn't tell a guard I was really a newspaperman and wanted to speak to the attorney general. Bieloff, broke into a grin.

"Oh, he could do that, all right. They'd just think he was crazy."

Only when the difficulty of vivid recollection of the outside world recurs day after day do I realize that it is not because of fatigue or tension or a bizarre day. In prison, the outside world quickly becomes unreal.

Around 5:30 in the morning, the turnkey comes by turning the bolts on each door. It does not release the door. Every cell on the tier is automatically locked by a 200-foot-long bar. Only when that moves about four inches, with an almost inaudible rattle, does it release the doors.

"New men—chow!" I was told last night to ignore that call. The bar moves and after 30 seconds closes the tier again. Five minutes later, at about 7 a.m., there is another shout, "DCCII—chow!" That's it.

Like all entering inmates, I am in DCCII, Diagnostic Classification Center, Huntingdon, the first weeks of prison when there is recording of personal and criminal histories, some testing and assignment to a permanent cell block and permanent prison work in the soap factory, printing plant or clothing mill. The bar moves to the open position and I step out of my cell.

### Some Inmate Companions

I see my group for the first time, about 25 men with rumpled hair shuffling to line up along the wall. Mostly in their twenties, mostly with long hair, sideburns and some beards. Three blacks. All looking unfettered.

The guard says, "Let's go," and we walk in loose formation through the Center, the hub of the prison. I fall in next to an older man who nods briefly.

At the dining hall, a large room with about 20 rows of ten tables, each table with four wooden seats attached. All 700 prisoners eat together.

At the entry is a table with a large container of utensils. A uniformed guard wearing transparent plastic gloves picks up one knife, one spoon and one fork and hands them to each prisoner. We shuffle to the cafeteria line, taking metal, welled trays from a rack. Inmate workers hand out the food, sometimes helping it into the tray with hands encased in the surgical-looking clear plastic gloves: one fried egg, a cookie, box of dry cereal with milk, fruits, coffee.

Each group occupies a single row of tables. The kid next to me asks if I'm new and I asked what it's like here.

"Guards here are pretty good. Used to be a lot of head-knockers here. Real rough. Used to hit you with pipes and clubs. But they got rid of most of them. A few . . . left, though."

### Self-Segregation of Races

The dining hall is strictly segregated, self-segregated I'm told. Blacks eat together, whites in their own rows. At a sign from our guard we return our trays to the cafeteria line, rinsing out our steel coffee cups. We carry our utensils to the door where another guard watches as each man deposits one knife, one spoon and one fork. No retention of weapons material.

We walk back to the cell block and are locked into our cells. There is nothing to do. Nothing to read. Razor and toothbrush and other personal effects were scaled up last night.

At lunch I sit next to Black, a tall Hell's Angel type, unbuttoned shirt showing masses of tattoos long hair in the neck, chin whiskers, a cross tattooed on the left cheekbone.

He speaks with a curious Southern accent. As a black prisoner walks by he says loudly, "There goes a prince." Another black walks by, "There goes the king." He looks at me and laughs. I don't laugh. He scowls.

He eats a spoonful of ice cream from his paper container and then offers me the rest. I decline. He looks at me steadily and says, "Gettin' pretty fat—bad when a man can't give away some m— ice cream just because he took a bite on it." Back at the cell block his cell is directly above mine on the second tier. As we wait in front of our cells for the bar to move, he drops a match on me. I figure I'll have trouble with him. He turns out to be my best friend.

In late afternoon, I am called to the hospital again. Still no pills and no razor. Return to cell block. As Christmas week extra, can watch television.

Black is on the bench behind me. I remember some last-minute advice given me, "Don't turn your back to anyone's cell; they can stab through the bars. And keep your back to the wall." I remain conscious of Black.

After supper comes the daily exercise in prison democracy: inmates vote on television programs. Between 6:30 and 6 prisoners have a choice of activity. They can watch television at one end of the corridor. They can play pinocchio at tables at the other end. They can sit on the concrete floor and talk in the middle. Or they can choose to remain locked in their cells.

If men choose to watch television they can vote as a guard reads out the six choices for each half-hour segment. Men on the other side of the cell block join us, so there was close to 50 percent black sitting on the benches. Relaxed but separate.

The first vote is on "Free Hawn," an all-white country-and-western program. It's on racial lines, most whites for it, all the blacks against it. Whites win. Overwhelming vote for "All in the Family." On subsequent nights, "Gin-smoke" is another big favorite. Also Dragnet.

### Conversations Full of Daring

Then begins what was to be repeated day and night, the calculus of prison conversation: daring crimes taking incredible chances, violent fights, big hauls on robberies with the money quickly spent. "So I put the muzzle of that m—ling .36 right against the neck of the m—er and said 'Jeez drop your wallet . . .'"

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are interested in the escape. If a man escapes, he's a hero. I can handle it." Someone asks how Huntington compares with other jails. "Alan, I've seen 'em all, and I don't really see that much difference. I can get along in any of them. You just go in, don't f--- with anyone, pick your own group and stay with them." Or, "The hole? Why in Ohio State I was in the hole for 30 m---ing days for fighting. First day I got out I find the same m---er and Phnom! I bust his jaw. Back in the hole for 60 days..."

A standard story told by a half dozen men on different occasions in various forms is the inmate's version of a profane and defiant speech to the judge who sentenced him.

"Send me up for life if you want, you m---er. I don't give a shit what you do. And I turned my back on the m---er and walked right out of the m---ing courtroom." Like the sex fantasies of barracks life in the Army, it's almost certain most of the speeches were never made.

In personal conversations without an audience there is less bravado, less violence.

"See that guy over there from B block? He's the greatest escape artist ever."

"Yeah? Just escaped from the street into Huntington State Penitentiary?"

Toward the end of the evening, Ollie

lives over and sits on the floor. He says he might have to be transferred for 45 or 60 days. One of the group says, "Don't! I know what you're up to. You're a nigger. What was wrong with this state pen at Pittsburgh."

"Niggers control this. This is our place."

Mack shakes his head.

"All I tell you, wherever the niggers are, they try to talk over. Indiana State, the m---er, weren't even a majority and they took it over. You got to fight them or they'll do it every time. They ain't taking this joint over, I'll tell you that."

That afternoon during the movie, the villain is shown full-on on the screen during his most despicable moment. Even a black group of prisoners comes the shout, "That's a white man for you!" From a white group: "He's probably a Jew."

Although something like half the prison population is black, I see only one black officer on the staff. Most of the guards seem relaxed, able to small-talk their way around tense moments, avoiding harsh confrontations, establishing an atmosphere of easy relations with most of the prisoners.

Two or three of the guards are noticeable by contrast: rigid personalities, barking orders, speaking in contemptuous tones. It is remarkable how easy it is for a single harsh order to put everyone's teeth on edge. Prison is depressing and demoralizing, the walls and bars and guards and gates and steel and concrete remind one every moment that he is not free, that he is not a whole man because his whole physical being is under someone else's control. Paying guards keep that from being an intolerable challenge. A few backed orders in a harsh tone raise the level of felt hostility.

By Douglas Chevalier—The Washington Post

The exercise yard and sign tower at the fortress of Huntington.

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Cell 111 at Huntington State Correctional Institution, home of "Benjamin Barsamian," Number 50061.

By Dennis Chavakis—The Washington Post

It makes you realize that a couple of guards could bring the place in a crisis in a short time. At Huntington, the guards do not seem very sophisticated or educated—many of the prisoners are obviously more so than the staff—but this doesn't seem related much to their effectiveness at preventing confrontations. Most are skilled at easy relations and relaxed manner. With whites.

There is little or no visible antagonism to blacks among staff, merely an evident lack of communication.

One day one of the blacks in my area, then in sweeping the catwalks, singing

in a high-pitched voice like Ray Charles.

"What the hell are you doing?" the guard, an older man, yells harshly.

A young white inmate sitting on the floor near the guard says, "Oh, he's just that way, you know," and he twists his finger around his ear, indicating nothing. The guard mutters, "They're all like that."

Up on the catwalk, the black continues his song singing in a thin voice and only if you listen carefully can you hear him sing a phrase that included, "goddam f---ing bitchy . . ."

In the exercise yard a few days later the same young black, a Muslim, is not silent as he argues with a white prisoner.

"This is the religion, God is in us. We have the power of God in us. You never see the guards f---ing with any Muslims, do you? You know you have? Why you think that is?"

At 3 o'clock, the television set is broken. The floor guard and everyone look at it and it sits locked in his cell for the night.

#### Husbands and Wives

The second day, a large homosexual inmate is moved into the cell next to me. He is an outstanding athlete, which may explain why he is treated with some deference.

Homosexuality is evident. In the auditorium the queens are obvious, some primping their hair, others walking in tight trousers with swaying hips. Some arm-in-arm and referred to casually as husband and wife.

My neighbor is referred to as "she" and "her" and plays the role of woman openly. The first night he is on the cell block, he borrows a razor blade from me, saying, "My husband will pay you back tomorrow." At supper one night he says to me, "Does my lipstick show?" Back at the cell block he has a quarrel with another homosexual, shouting at him, "You walk around here like you are God's gift to men."

Later my neighbor turns hostile to me. One night he asks, "Are you a Jew?" and when I said I was not, said, "Then why have you got such a crooked nose?"

There are jokes about my neighbor, but in anger they center on his blackness, not his sexual role.

At 3 a.m. one morning, my neighbor begins singing in a falsetto. Guards come from around the cell block as men wake up. "Shut up!" for Christ's sake, shout the guards. "White m---ers!" The white refrain from too open and black epithets. But my neighbor shouts back, "White m---ers!"

When the other prisoners keep shouting, my neighbor goes to his cell door and yells, it, calling, "Guard! Guard! Come here. Hec! Hec! I need you."

The prison is not on the edge of racial conflict, at least to this eye. But hostility is near the surface.

#### Earning 25 Cents a Day

I still have no reading material on the third day. Black gets some correspondence forms and lends me a ball-point pen.

Most of the time I still sit in the cell and stare at the standard view: the steel lattice-work on my cell door, illuminated against the lighted corridor wall beyond. When you close your eyes you still "see" the scene, but in reverse like a photographic negative, the image burned into your retina.

Almost all the visible lines are straight and rectilinear, all the colors subdued, from the tan walls to the guard's gray uniforms. For some reason, my eye keeps going to a pipe entering my cell through the lattice-work and later I realize that it is one of the few curved lines in my scenery. Everything soft or tender of complex has been eliminated. Surfaces are all hard: tile, steel, concrete, brick. So sounds echo, harsh but indistinct.

Even the steel mirror on my wall is in a shadow and reflects only a blurred gray image. On the third day, still unshaven, I walk by a clear mirror on the cellblock wall that lets guards look around a corner and I see "another prisoner" appropriately crumpled and grim. It is my own image. Shocking.

One morning, at 8, I hear the whistle from the prison soap factory. I envy the inmates their work. Shortly afterward a truly comes to the cell door.

"Hey, want to work?"

As an unencumbered prisoner, I cannot be forced to work.

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and a pink dress window. A day there and I'm out. Blacks shower together at one end, including my neighbor.

"You can make 25 cents a day."

I leap at the opportunity.

I mop the concrete floor of the cell block. As we work around the guard's desk, one young inmate says he's going to California when he gets out.

The kid next to him said, "What'll you do if you can't make it and you're on the West Coast?"

"I'll just pull another armed robbery."

An older guard, tipping back in his chair, said:

"That's where you're wrong. You better not do that in California. Non-ald Heenan, he don't f— around. He'll just put you in the gas chamber."

I'm called to the hospital to see the prison doctor. He has seen my shaving kit with the medication in it.

"I don't see any problem with giving him the scabicide," he says to no one in particular. "If he takes them all he can't kill himself."

He turns to some sleeping pills and then to me.

"I don't see why anyone needs medication to go to sleep at night. If he gets off his ass and does some work he won't have any trouble sleeping."

I decide not to tell him that we're locked in our cells from 17 to 20 hours a day.

#### A Hint of the Outside World

Even volunteering for work does not prevent the hours of idleness, but the idleness produces less idleness of thought than I expected. It is hard to think of life on the outside with any immediacy. Important places become blurred in memory in an amazingly short time.

Prison is total. It strains out clues to normal life and in the void every petty detail on the inside becomes important. Relations with other inmates take on a profound quality. Nothing outside the wall seems real any more. It may be no accident that television news is voted down every night.

Yet what fragments of the outside world do intrude become desperately alive. In the early morning hours, if I go to the door of my cell, I can see a small patch of sky through a window in the outer corridor wall. In the predawn hours there is a strange anxiety because the sky is not visible, an uncertain grasp of time and reality. The first light of dawn becomes exciting, the sight of drifting snowflakes intensely moving, the shadow of a bird in flight marvellous.

The first time we are permitted outdoors is an almost explosive experience, an enormous view of blue sky. The yard is an asphalt square 30 feet by 200, surrounded by the wall.

Another man and I walk the confinement: oblong for two hours in latter cold, but it seems like five minutes. He had been a woodworker in Pennsylvania and a hunting guide in Montana and is going to do "I can handle it," he says. "If I do the six I'll only be 30 years old."

The bird on the tower watches us and when we be in taking larger notes into a hand pool, he has to come out into the shadowed enclosure and stand on the outer parapet bunched into his coat. As we walk, we talk about weeds, animals in bloom, air, airplanes, cities, rural life.

birds and dentistry. Two smart women old timey magazines, one old Argosy in an old my culture from Pittsburgh. I read them all, cover to cover.

The next day is library call. Practically every prisoner goes and some of them make surprising selections. After meticulous analysis of the October TV linkings for Pittsburgh, it is exorbitant reading Dean Acheson, Simone de Beauvoir and Gore Vidal.

#### "You Here for Your Health?"

Anxiety about my cover, which means my safety, doesn't develop until the fourth day. It is at lunch. At my table is a man from our section who was friendly at first but then cooled off. He is well educated, likes to whistle Mozart and Bach themes, and has lots of reading material which he promised me but never delivered.

He has been increasingly suspicious of me and I have stayed clear of him, especially after I found out that he worked in the front office and has access to an outside telephone. If he called the county jail I was supposed to have come from they would never have heard of me. If he discovered that, the word would get to my friends who would make an unfriendly assumption.

"You here for your health?" he asks as we eat.

He means was I sent here to protect me from threats of other prisoners. I replied that I wasn't.

"What are you charged with?"

"Murder."

"Where?"

"Adams County."

"This is a long way from Adams."

"They think it will be a long wait before I get to the grand jury."

"They usually transfer area to Camp Hill."

I shrug. But I have a feeling time is running out.

I worry about confederates other prisoners had shared with me; they might be remembered if they heard I was under an assumed name. I begin walking away from crucial conversation.

But conversation is hard to avoid. It has special meaning in prison relations, where men are thrown together almost at random and must make crucial decisions about each other.

Prisoners live in fear of each other and in trust at the same time. They have fear because everyone is under total control of the authorities, who can influence whether a man will serve two years or six, or live in a savage cell block or a civilized one, have a pleasant job or distasteful one, avoid punishment or be sent to maximum isolation. The prisoner is forever navigating this jungle. Some do it with weapons for self-defense or for coercion, weapons usually fashioned from scavenged metal. But the more common weapon is information that can win a recommendation for parole or pleasant assignments. So fear of betrayal is rampant.

But inmates fear each other and need to trust each other. They are united in common hatred of the criminal justice system. They are united in loneliness. Wives, girlfriends, parents, working colleagues, friends, the usual universe by which a man finds his identity and humanness, all are gone. In the void, fellow inmates become indispensable.

ence is, maybe where he comes from and what other prisons he has been in.

After that, it is up to him to volunteer information. The result usually is a great deal of talk, personal history and reactions to people and life. You enjoy the trust of others but at the same time fear it. Everyone is trapped together and each man has the power to harm the others. Trust and betrayal are potential in every relationship.

After I feel the twinge of paranoia, I stay out of the blind spots in the exercise yard, the spots in the corners out of view of the guard in the guntower, two of which I have found in the mental game of "escape" that everyone plays. I stay away from bunched-up lines at the dining hall. All unneeded, no doubt.

#### The Values of Prisoners

In his own way, Black is a puritan. "There was that m—ing car, free and clear, not a cent owed on it, and I couldn't drive it. I didn't owe a m—ing nickel on it, not a dime. Took me two armed robberies to get it, but I owned it free of debt."

I wonder why my best friends are men whose social values I abhor. They are mostly racists who in their careers hurt innocent people. They are often liars and braggarts, not only in their dealings with the authorities, which was required, or in hell sessions, which is forgivable, but also in their personal lives. Their talk is full of killing, shooting, pimping, treachery, treachery avenged and the endurance of suffering.

They exist beyond the bravado and toughness that in prison is necessary for self-defense. They have other feelings but they had no vocabulary for them. I marvel that for some unfathomable reason, after years of being bruised by their parents (Black's mother lashed at him when he was arrested at age 14; thereafter he had four stepmothers and five stepfathers), by their families, after years of chaos and abandonment, years of imprisonment in various degrees of savagery and subjugation, their spirit is unbroken. They refuse to be beaten. Some are strange and withdrawn. Most are not.

One day, as I watch the population file out of the auditorium, they suddenly strike me as not so different-looking from the students I had seen a few months before at the University of Wisconsin: same cool attitude, beards, sideburns, the quick quizzical eyes, clothes worn shoddily-expensive, more—but very cool.

Most of the men are in their late 20s. If the men at Huntin'don had four more grades of median school achievement and \$3,000 more in potential median income, they could be taken out of the auditorium of the state university instead of the state penitentiary. There is much talk about their experience at "Indiana State" and "Ohio State" but they mean state pens. The universities of the poor.

The morning I am supposed to be pulled out of prison I go to work as janitor in the schoolroom. I begin to wonder if they will pull me out today. Maybe there is a big crisis on the outside and everyone will forget.

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Just before lunch, I am ordered to the identification office. They are finally going to complete my records, take my mug shot and fingerprints. Time is running out.

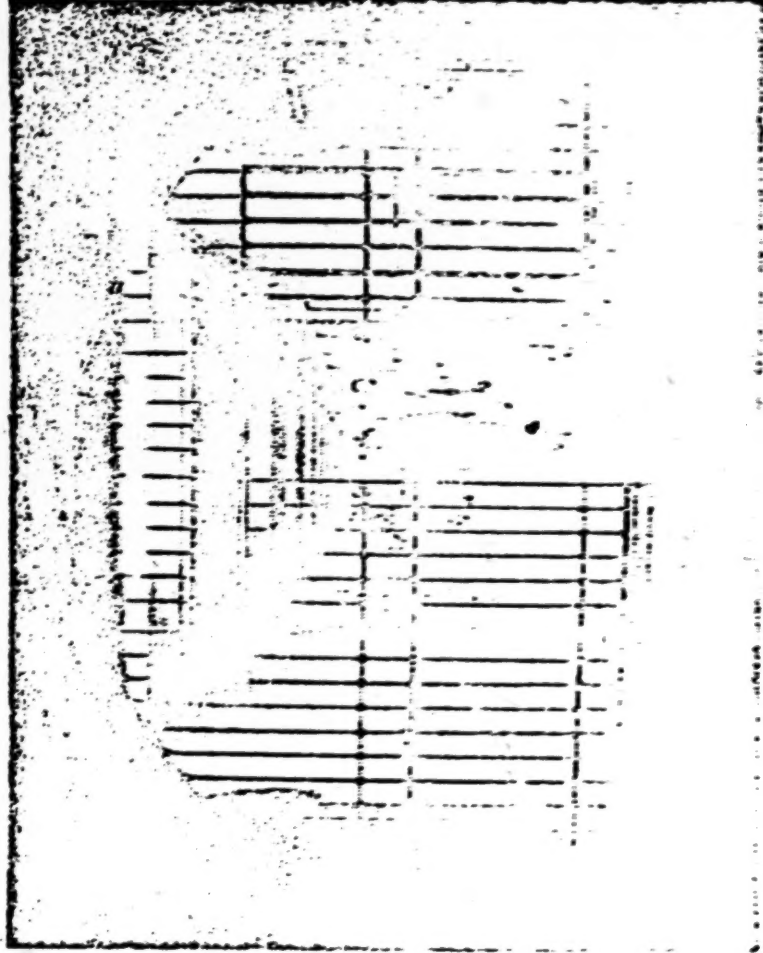
I give the man my name, charge, county and hearing judge. He asks my Social Security number. I remember the briefing in the attorney general's office: "You don't remember your Social Security number. Be clear on that. If they have your Social Security number, they can pick up their phone and in 30 seconds know everything they need to know about you."

The fingerprint man is working on me when a clerk walks up. "Hey, one of these guys has to go back to the county today. They're coming for him at 2 o'clock."

Two hours later, after my sixth day, two men in plain clothes issue the prison a "Body Receipt" for prisoner Benjamin Bersamian who, 49 feet beyond and two minutes later, outside the wall in the unlimited air, ceases to exist.

**NEXT: The Male Prison**

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Looking into Lewisburg's main corridor . . . "carefully but bureaucratically run."

by Margaret Thomas—The Washington Post

## Bureaucratic Overload Turns Justice to Misery

Third of eight articles.

By Ben H. Bagdikian  
Washington Post Staff Writer

They look like a Norman Rockwell painting of democratic American life—kindergarten kids, some Orientals, some black, some Caucasian, cheeks ruddy in the morning cold, skipping and laughing, paired hand-in-hand, with two good-natured teachers guiding them along the sidewalk of Baxter Street.

A few of the children look curiously at the scene across the street. Fourteen men, all blacks, handcuffed in pairs, shivering in their shirt sleeves, jump out of a police van and disappear into a steel doorway of the Manhattan House of Detention, the Tombs.

The first thought prompted by the sight of innocent eyes watching the gray scene is, "Thank God they don't know what it's like inside." The second thought is, "Perhaps they should. Some of them, some time in their lives, will be held in a jail."

Of all places of restraint, jails are the worst. They are detention centers where men, women and children get their introduction to the criminal jus-

tice system, where they are held after their arrest, where they stay awaiting trial unless they have bail money, or where they serve short sentences for minor crimes. Most are designed for only short stays; prisons are for sentenced people.

But for people too poor to make bail, an overloaded and creeping bureaucracy of justice keeps them in compartmented misery for weeks, months or years, the majority of them not yet convicted of anything.

The Tombs is famous: 12 floors of cages, the scene of a spectacular series of prisoner rebellions in 1970 against overcrowding, racial abuse, vermin, court delays. It is now more than a year after the rebellions were put down with promises of reform.

I enter the public door.

Minutes later, the chairman of the City's Board of Corrections, William Van Den Heuvel, arrives, an old Kennedy hand in the Kennedy manner, big, shell-rimmed glasses, full of bounce. We are admitted and start taking elevators to various floors.

See PRISONS, A11, Col. 1

Each floor has a double tier of cells with adjoining small concrete and steel enclosure where prisoners spend the day playing solitaire or dominoes. As guards let us inside, Van Den Heuvel surrounded by men, like a feudal lord beseeched by beggars inside the castle wall.

"Mr. Van Den Heuvel, please help me. They've lost my papers and I've been here four months."

"Mr. Van Den Heuvel, I'm afraid I'm gonna go out of my mind. They transferred me from Rikers a week ago but they didn't bring my medication and these headaches I can't stand."

"Please help me. I'm an addict. I've been on heroin 17 years. I got on a methadone program on the outside and got off heroin. But I got arrested and brought to the Tombs. I'm on methadone now but they tell me that when I get out tomorrow I can't get back on the street program because I missed treatment and they got a waiting list that takes 30 days. I'm afraid I'll go back on heroin."

"Please help me"—his hands reached through the bars of his cell—"I'm fucked up because I'm a homicide case. But the sink here leaks and there's water on the floor all the time. My feet are wet. Can't you do something..."

One whole floor holds homosexuals. In another floor a dozen young blacks in enthusiasm in military formation. Our escort, Capt. Paul Felton, 17 years a guard, says, "Look at 'em Panthers. Black Panthers. Killers."

An older white man with a painted smile cries out from a locked cell. "Hey, come here. I'm here by mistake. I'm fucked up by mistake. I'm a native New Yorker. I know my way around. I've been to Harvard. I've been to Harvard twice. I know my way around. They made a mistake. Hey, hey, listen..."

Let Van Den Heuvel what they do with psychotic prisoners. "If the psychiatrist says a man is psychotic, the man goes to Bellevue. Bellevue will hold him only while he's as fit, meaningful, practically unmanageable. Then they send him back."

Why isn't he sent to a mental hospital?

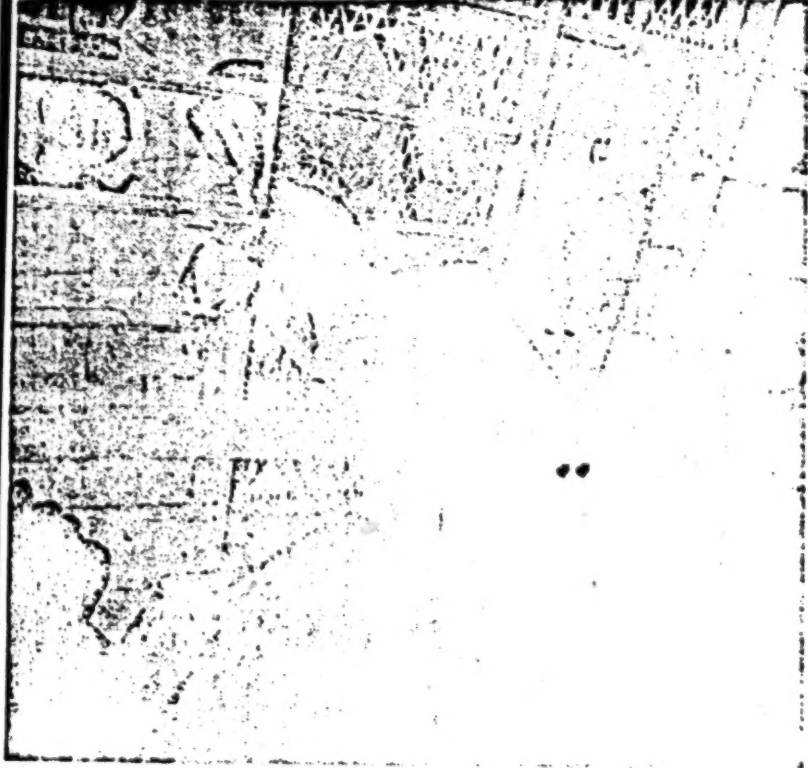
"No way. They're full, too." He guesses that 15 per cent of the prisoners are mentally ill. That would be about 250 men. There is one full-time psychiatrist.

#### Epidemic of Suicide Attempts

There have been 11 suicides and over two attempts in the last year. In the last few months, there has been an epidemic of men breaking the toilets in their cells and attempting suicide with the pieces. It takes the city nine months to replace a toilet.

Many of the riots is still strong among prisoners. One shouts at us, "Hey, new-que run. Ask them about the teachers and the rats. Ask them." Capt. Felton yells at the prisoner, "Show me a rat! Go ahead, show me to me. These aren't rats, they're mice. Don't you know the difference between a rat and a mouse?"

The day the riots began, the Tombs with a rated capacity of 102 men, had 1,116 prisoners, 37 per cent overcrowded, the day I visited, 14 months later, the rated capacity was 373 because of damaged cells, and there were 1,133 prisoners, 63 per cent overcrowded.



—The Washington Post

#### Prison staff gives an inmate methadone at the Tombs in New York.

After the riots, the city somehow found \$2 million in emergency funds. It added 24 tons of steel on each floor to increase protection of the staff.

Outside, the school kids were long gone. Over the door of the Tombs court complex is the inscription: "Justice Is the Firm and Continuous Desire to Render to Every Man His Due."

And under that a bronze plaque notes that this building was erected on the site of the underground railroad that helped free black men from slavery.

New York City is not alone in the misery of its jails. Last year a group of inmates in Baltimore City Jail petitioned the city court for relief from the following claimed treatment:

Officers in the jail regularly forced some retarded inmates to perform sexual acts on the officers; other retarded inmates were chained to the bars of their cells and beaten with keys; inmates in Sections N and O, while confined and peaceable in their cells, were forced by guards because inmates had protested their treatment; when an inmate told a guard he was suffering from narcotics withdrawal the guard forced him; inmates had been warned not to talk or write about conditions in the jail.

Riots over overcrowding and all that means—dirt, disease, homosexual rape, hysteria, exposure to psychotics—bring promises of relief.

In Wayne County Jail in Detroit, conditions did not lead to riots. Instead, there were 33 suicide attempts in two months.

Bad as city jails are, rural jails have their own special morbidity. Forrest County Jail, in Hattiesburg, Miss., isn't the worst but it isn't the best. The building may collapse. The cells are filthy, full of vermin, dirty races and paper. The brick walls are so porous that some prisoners escaped by scraping away the mortar between bricks with a spoon.

In one year, the jail held 2,657 drunks, 628 people accused of felonies and 52 believed insane and awaiting commitment proceedings. It has held 12-year-old runaways and lost children in the same jail. Trials are held only every three or four months and it is not unusual for a prison to wait in jail nine months before anyone decides if he is guilty.

Until this year, the sheriff in charge of Forrest County Jail got no salary. Instead, he got \$1 for every arrest he made, 10 cents a mile for transporting the prisoner from place of arrest to the jail, \$2 for lodging the prisoner into the jail, and \$3 for every prisoner held each day in the jail. There was no public money for food and other maintenance of the prisoners, so it came out of the sheriff's fees.

The state of Mississippi, as of this year, ended the fee system for sheriffs, but the practice continues in hundreds of counties across the country, rewarding sheriffs economically for making maximum arrests and jailings, and punishing him economically if he feeds and maintains the prisoners decently.

Forrest County is better than most in one respect. Its grand jury has regularly condemned the jail for years. Typical was their finding in 1968: "The grand jury is of the unanimous opinion that both the city jail of Hattiesburg and the county jails of Forrest County are unfit for human habitation."

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United States. There is no way for administration or imposing civilized standards on them.

The U.S. Law Enforcement Assistance Administration has counted those that are authorized to hold persons two days or more, and there are 4,037 with 161,000 men, women and children in them on a given day (5 per cent women and 5 per cent children).

LEAA says 86 per cent have no exercise or recreation for inmates; 90 per cent have no educational facilities; 80 per cent have no medical care; and 14 per cent have no flush toilets.

There are over 100,000 cells in these jails and more than 5,000 of them are over 100 years old. About 25 per cent of these cells are over 50 years old.

More people than ever are headed for such places. The President's Crime Commission in 1967 said that 40 per cent of all male children now living in the United States would be arrested for a nontraffic offense some time in their lifetime. Most of those will spend some time—hours or days or weeks or months—in a local jail.

### The Planning of Prisons

Unlike jails, prisons are built with the knowledge that they will hold inmates under sentence, usually for more than a year and sometimes for life. These institutions, usually for adult males, are not accidental in their design and operations but are carefully planned and constructed and operated by large bureaucracies of full-time careerists.

It is depressing to consider what some men will plan and operate. It took a law-suit in Virginia to expose the following treatment in the state penitentiary:

An inmate who attempted suicide had his neck taped to his cell bars for 14 hours and then was left naked in his cell for 17 days; a black prisoner sentenced for help in solitary confinement for one week before dying unattended of sickle cell anemia; one inmate was locked in his cell without being let out for 743 days.

Federal Judge Robert R. Merhige ordered drastic changes in the Virginia prison system to eliminate atrocities by protecting prisoners' rights. The head of the state prison system said these rights are "not practical in the prison situation."

The State of Alabama, proud of receiving all federal aid, built a new maximum security prison, the Holman unit, in Atmore, Alabama.

Holman was originally planned for 500 men; it now holds 840. There is not one classroom, no gymnasium, no auditorium, no hospital, no teachers, no psychologists, no social workers. There are very few guards—about 18 to a shift—and they are paid \$3,900 a year. The prison is heavily grom-

The prison is organized with some open dormitories, some multiple-cell-pency cells and special cells for punitive segregation. Unfortunately, the television monitors show only shadows at night and men in dormitories make tents of blankets that the television can't see through. Homosexuals roam the dormitories freely and there are fights, stabbings, homosexual rapes and homosexual prostitution.

Rather than risk assignment to dormitories or to work details under brutal conditions, men sometimes prefer punitive segregation which is not exactly luxurious: the punitive cells have four men to a 5½-by-7½-foot cell with nothing in it but a single blanket and a five-inch-wide hole in the floor for a toilet. On one day, there were 145 men in segregation.

To avoid assignment to dormitories or segregation or work details with guards who are especially brutal, prisoners often cut their own Achilles tendons, an act that occurs about once a week.

The prison is shoddily built, leaks in the rain and leaks between floors. One official who works there says, "It must have been designed by a psychotic." The present warden was not associated with its design or construction.

Asked how he survived at Holman, one inmate said:

"One, you shoot dope. Two, you find yourself a boy and make out sexually. Three, you burn yourself out reading. Four, you just sleep."

### The Rule of Silence

The deliberate dehumanization of inmates is not limited to Alabama state prisons.

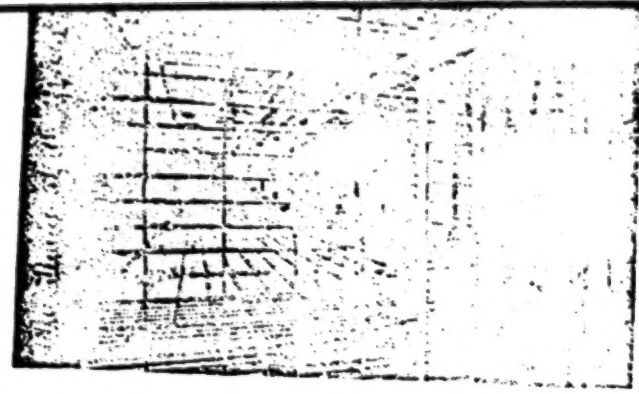
The enlightened state of Wisconsin forbids prisoners in its maximum security penitentiary at Waupun to speak in their cells in the evening. In a special cell block, inmates may not speak at all and one inmate said he had spent 11 years without speaking except when spoken to by a guard.

Portsmouth County Jail in Virginia is a handsome, new high-rise structure overlooking the beautiful Elizabeth River and Norfolk harbor. It has a peculiar architectural feature: outside each barred window is a concrete slab held eight inches from the exterior wall. Its purpose is to prevent prisoners from seeing the view.

The most carefully designed prison system in the country is the Federal Bureau of Prisons. It has often been run with enlightened, humane administrators in Washington who recognize the prisoners are human beings who will return to mingle with their fellow citizens.

But Congress is the real boss of the federal prisons. In the past this has resulted, at best, in near-neglect. There has been a Senate committee on prisons since 1924. Its annual appropriation of \$5,000 was usually turned back minus the cost of a few senatorial trips to a federal penitentiary for what the senators informally called "cockroach counts."

Many politicians, including some of



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...have been shaping  
...in ways that make it  
...society from crime.

...problem in American pri-  
...isolation in rural places,  
...without public transportation.  
...prisoners cannot visit; mar-  
...inmates break up and normal  
...members who have rapport  
...inmates, who are overwhelm-  
...urban and after a majority  
...The prison has difficulty getting  
...teachers, psychologists,  
...vocational trainers, soc-  
...to move to remote coun-  
...And if a prison decides  
...prisoners or teach them  
...skills before their release,  
...few rural schools or factories  
...this can be done.

Nevertheless, prisons continue to be  
...in precisely the wrong places.  
The usual reason given is that land  
...and the isolation is better  
...Land is usually cheaper  
...but that is not always a large factor;  
...are full of expensive hardware  
...as much as \$22,000 a bed to  
...And most rural prisons have  
...escapes, while there has  
...been an escape from the most  
...of all institutions, the Tombs,  
...of the heart of Manhattan.

The real reason prisons are located  
...the country is that legislatures used  
...controlled by rural politicians  
...placed the prisons there as profit-  
...and opportunities for  
...factories.

Yet if prisons have not escaped,  
...for visitors is a difficult  
...for any federal prison, since  
...inmates from all parts of the  
...though located near a big  
...old simply travel. But federal  
...like state and local ones, also  
...from rural locations in obtain-  
...staff from the sur-  
...countryside and providing  
...to work, study and volunteer  
...for its programs.

The newest penitentiary in the  
...system is the maximum secur-  
...at Marion, Ill.

The prison was planned in 1923 and  
...as a maximum security unit in  
...It is eight miles from the town of  
..., which has a population of  
...The nearest city of any size is  
..., Ind., 75 miles away. The  
...metropolis is St. Louis, 100  
...away.

there was the availability of a federal  
wildlife preserve and security, since it  
replaced Alcatraz. The real reason is  
that the late Sen. Everett Dirksen, in  
addition to being Senate minority  
leader, was ranking Republican on the  
Judiciary Committee, which has juris-  
diction over federal penitentiaries.  
And he wished a federal facility in the  
southern tip of Illinois, where his  
strength lay and which at that time  
was suffering from economic depres-  
sion.

For the first time, the past year has  
seen interest by some committees and  
individual members of Congress in the  
basic problems of prisons, prisoners  
and criminal justice. A few have gone  
into prisons for the first time to talk to  
inmates.

Their nearest stop is Lewisburg fed-  
eral penitentiary, impossible to reach  
by public transportation, spacious, im-  
probable Gothic arches and hand-  
carved stone in the dining room, care-  
fully but bureaucratically run (visiting  
rules: one kiss at the start, one kiss at  
the end), not without the pathology of  
most prisons (an officer told one mili-  
tant prisoner, "Why don't you get  
yourself a boy and settle down") but  
better than most.

Not all prisons in America are grim  
dungeons with iron idleness. Here and  
there, the system has produced ameni-  
ties that begin to resemble outside life.  
At California Men's Colony East, at  
Los Padres, a medium security prison,  
one inmate was disciplined for break-  
ing a window when he hit a golf ball  
too hard on the prison's miniature golf  
course.

But this does not eliminate the mor-  
bidity or the punishment. A survey of  
877 inmates showed that most thought  
that from 30 to 50 per cent of the men  
would become involved in homosexual-  
ism before they left the prison.

At Leesburg, N.J., and Vienna, Ill.,  
state prisons are designed to avoid the  
concrete-and-steel cage atmosphere.

There are many Americans, includ-  
ing many legislators, who feel that soft-  
ening the harshness of male prisons  
will diminish the punishment and  
therefore encourage crime. A major  
theme of congressional appropriation  
hearings for prisons is the fear that in-  
mates will be placed in "company  
clubs." It overlooks the fundamental  
punishment of any prison: to be de-  
prived of liberty.

**NEXT: Women in prison**

## The Shame of the Prisons



The campus-like grounds of the reformatory at Alderson, W.Va.  
By Margaret Thomas—The Washington Post

# Female Homosexuality Prevalent

## Fourth of Eight Articles

By Ben H. Reedikian  
Washington Post Staff Writer

So far as anyone knew, she had a conventional sex life on the outside. But shortly after she arrived at the Federal Reformatory for Women in Alderson, W.Va., she stopped telling people her name was Charlotte and said it was "Charlie."

Charlie soon discovered the mysterious ways some of the inmates get hold of men's clothing—desert boots, dunnies, T-shirts, zipper jacket, visor cap. She began walking with a masculine swagger, talked tough, held a cigarette in the

corner of her mouth, and shortly afterward established a relationship with another woman inmate whose manner was obedient and submissive while Charlie acted strong and protective. They were thought of by the other inmates and by the staff as husband and wife.

One of the peculiarities of women's prisons is wide-spread homosexuality. Estimates run to 60 and 80 per cent, far higher than for men's prisons.

But homosexuality is only one of the distinctive qualities of female imprisonment.

Women's prisons are the step-

sisters of corrections. The literature on them is sparse, statistics on the female prisoner even less reliable than on males. The massive nine-volume report of the President's Crime Commission in 1967 barely mentions women.

The unkindest cut was from prison reformers, whose publication, The Free World Times, listed prisons that experienced unrest after Attica but ignored the sympathy strike of 120 federal women prisoners in West Virginia who were teargassed and 66 of whom were punitively transferred to other states.

See PRISONS, A10, Col. 1



# Prisons Estimated at 80%

## PRISONS, From A1

One reason for lack of attention is: all numbers. Of 21,000 federal prisoners, 800 are women. Of the third of a million prisoners in state, county and federal imprisonment on any one day, 5 per cent are adult women.

But another reason is the peculiar status of women in criminal justice. In the offenses judges tend to be more "giving of 'the gentler sex.'" But when a woman violates moralistic codes, she gets harsher treatment than men.

Prostitution is a major cause of female imprisonment. For every prostitute there are dozens of male customers. The male participant is seldom arrested and when arrested seldom tried and when tried seldom imprisoned. In 1968 in the District of Columbia, 112 men were prosecuted for patronage of prostitution; 800 women were prosecuted for soliciting.

The impact of imprisonment on women appears to be profoundly different from that on men. Except in the most severe jails and state prisons, women inmates do not suffer the physical brutality and sense of imminent threat typical of the average male prison.

For one thing, women's prisons usually look less grim. They tend to resemble low-budgeted junior colleges. The tubs are called "cottages" and they may or may not have bars on the windows.

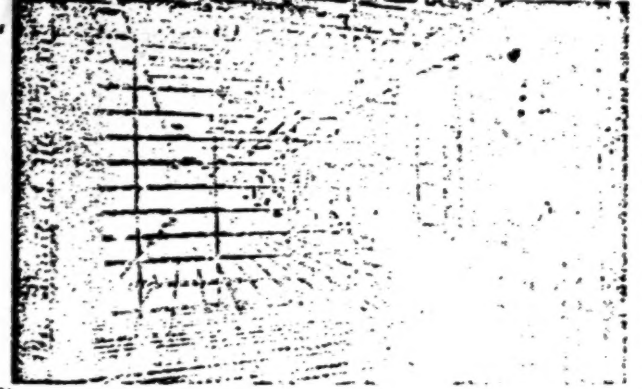
Women's prisons vary in their discipline, but all are less regimented and milder than the average male prison. Disruption of Families

But the locked-up woman has special aims. The worst is separation from her children. At Alderson, 50 per cent of the inmates have dependents. When they were convicted, the law wiped out their rights as mothers and made the children subject to adoption. Once the children are placed in a foster home, the adoption agency may forbid the mother to communicate thereafter with her children.

Another special trauma is prison's disruption of the conventional role assigned females in society—homemaker, helpmate to a male, repository of the gentle virtues in humankind. Women are usually brought up to believe as though they are tender, accepting and sensitive. At these are antithetical to prisons.

Males are conventionally taught that they are supposed to be strong, tough, aggressive and able to endure privation. Prison reinforces all of these.

While homosexuality is common in women's prisons, it is more so in women's. Most women are conditioned to feel less than complete beings unless they have a man. But it is socially acceptable to touch each other, hold hands, and kiss. Confidential relationships among women in normal society are more common than among men.



Attitudes Toward Homosexuality

In some women's prisons, staffs are obsessed with homosexuality and inmates are literally forbidden to touch each another. In such places, women seated in groups to watch television or movies must keep an empty seat between each person. This does not stop homosexual affairs which, like heterosexual affairs in the outside world, have a way of transcending barriers. But thoughts of homosexuality dominate such institutions.

Virginia McLaughlin, warden at Alderson, speaks in a relaxed way about it.

"One of the problems in a women's prison is staff preoccupation with homosexuality. My own personal feelings are that what goes on between consenting adults is their own business. We try to say that we're not moralistic about it."

Some inmates and former inmates of Alderson dispute the total tolerance. "At Alderson," one former inmate said, "the staff will bust you if they catch you."

"Mrs. McLaughlin isn't sure that all the apparent homosexuality is contained in physical relations.

"Who knows how much real homosexuality goes on here? There's a lot of role-playing. I suppose that 50 or 60

per cent of the residents here are in boy-girl play. Within our culture, if you ain't got a man, you ain't got nothing. That model carries into this institution. So a lot of people dress and act in boy-girl ways. But a lot of it is just role-playing to fill out the public image we've said women are supposed to project."

She thinks that whatever happens sexually at Alderson is reversible.

"If you come into this joint heterosexual, you leave here heterosexual. You may play games here and spend 20 years doing it. But darn few women who have developed a permanent pattern on the outside get turned around permanently in here."

Mrs. McLaughlin, the first married warden of Alderson—she married the local football coach—presides over the most famous of women's prisons, the only federal one specifically designed for females and one obviously more relaxed than the mass of state and county institutions.

Like most prisons, Alderson is 100 miles from nowhere. There is no public transportation. The train doesn't stop there any more, only at the Greenbrier resort hotel 20 miles away. It is an unlikely-looking prison. The setting in the foothills of the Appalachians is among forested hills and fast-moving creeks. The security is less than that in some fashionable girls' schools, the low chain-link fence no challenge to a moderately athletic woman. It has 17 residential buildings in red-brick, vaguely Georgian colonial style, actually called "dormitories," arranged in quadrangles around tree-filled malls actually called campuses.

Mrs. McLaughlin is a shrewd, sharp-eyed, sophisticated woman whose office is decorated in abstract non-industrial art and whose non-governmental issue coffee table has a shingling of *Blackboard* magazines—The American Scholar, Intellectual Digest, Trans-Ac-tion, New Yorker...

Prisoners are called "residents"; they can dress almost as they wish and pay a lot of attention to the latest fashions. The food is good as institutional feeding goes, rooms are decorated individually and there are few matrons visible to the visiting eye. Two honor cot-tages are self-governing and have no staff in them at all (and are unkindly called "snitch houses" by other in-mates; in prison an informer is known as a "snitch").

Mrs. McLaughlin knows she has the perennial problem of modern prisons: white rural staff, hired from the surrounding area, in total control of the lives of prisoners who are mostly from big cities and mostly blacks.

She has a staff of 261 overseeing 530 inmates. Eleven per cent of the staff is black, compared to 54 per cent of the inmates.

"It's very important to have blacks on the staff, important for the role they play. The black residents need to see blacks who have made it and are 'square'."

"There's an immediate communications gap. There's the gap between the very young, inner-city residents and the older, white, middle-class oriented staff, but even between black staff and black residents there can be a gap nobody tries to talk about, a class gap."

One afternoon recently, she had her final interview with a young, fashionably dressed black woman who was about to join the staff. The woman looked at her left. "I hear you, ma'am," Mrs. McLaughlin smiled lamely and replied, "Why don't we drop that '—'. Thank you ma'am" is lower-class white, you know."

Mrs. McLaughlin is sure that women prisoners are changing in attitude.

"Our drug problem's not so different. I looked at some board meeting minutes from 1959 and they had 40 per cent addiction then. But we are seeing more young offenders and a small but growing number of women who are active parties in regular crime. They don't just drive the getaway car or hide the money any more. They're pointing the guns."

"And we have militancy. They have a just concern with their rights. That's the way it is. Blacks have taken all they are going to take, being kicked around. Everyone has a right to say how they're feeling. Inside or out, we have to be concerned with individual rights. I don't care whether a person is in prison or out, they have fundamental rights."

#### Who the Inmates Are

Mrs. McLaughlin is asked about the unpleasant "dormitories" and "campuses." She enjoys smashing the stereotype of the hardhat warden issuing public relations muck.

"I don't care if this was the Green-brier Hotel, it isn't fun. This is a prison with 500 miserable people forced to be together. It can't be good, they can't go home, they can't relieve the pressures by going out to the street to a show."

she is not euphoric about the power of an authoritarian figure bringing change. "These aren't girls," she says, "they are women. They're here, and I'm not their mother."

But many of the inmates are, in fact, girls. Seventy per cent of the residents are 30 years or younger and a few are 15 and 16. They come from 40 different states and about 30 of them from foreign countries, convicted of crimes in the United States, usually smuggling dope. Thirty per cent have a history of prostitution.

"How are you going to teach a woman a trade that will earn her \$1.25 on the outside when she's been in the habit of making \$500 a night?"

If the women work in the prison industries they make from 19 to 47 cents an hour.

Forty-two per cent have a history of narcotics use. Only nine per cent have ever had a significant alcohol problem.

Like all prisoners, women inmates do not lack intelligence but have lacked sufficient schooling and what schooling they received obviously was deficient. About 60 per cent have average IQs or higher. About half of them went no higher than 9th grade but they, test out at a median 64 sixth grade level.

They are serving federal sentences for postal violations such as mail fraud, 23 per cent; narcotics, 20 per cent; forgery, 18 per cent; involvement with stolen goods in interstate transportation, 12 per cent.

There have always been about 30 robbers and about 30 in for conspiracies of various kinds, with only a few murderers and kidnappers.

Federal offenses are different from state. In one state prison for women, half were in for killing their husbands or boy friends and most of the rest for prostitution.

Like male prisoners, 90 per cent at Alderson have histories of prior arrests, with criminal arrests starting as young as age 7. Half of them earned less than \$2000 a year before their imprisonment, but only 26 per cent had ever been on welfare.

The statistics support the bias of the criminal justice system and of the outside society. Mrs. McLaughlin tells interviewers, "If you're poor, if you're black, if you're twenty-six and you're a woman, the dice are loaded against you."

She likes to tell that to the residents and then add:

"But prisoners have responsibilities. I'm sorry if your mother didn't love you and I'm sorry if you have no money, but you've got to face the future."

#### "An Emotional Binge"

For all its bucolic grace, tolerant atmosphere and the warden's anticipation of traditional complaints, Alderson has had its troubles. It has its "hole," the segregation cells in which women are punished by being locked in a bare tiled cell with no transparent windows, a toilet, and a cot. There are tensions and bitterness.

In September, residents of Alderson held a memorial for the prisoners in Attica. It evolved into a strike for reforms at Alderson, with 130 residents occupying the prison's garment factory building for four days. Mrs. McLaughlin sent in food and blankets for the strikers and received their list of 42 demands.

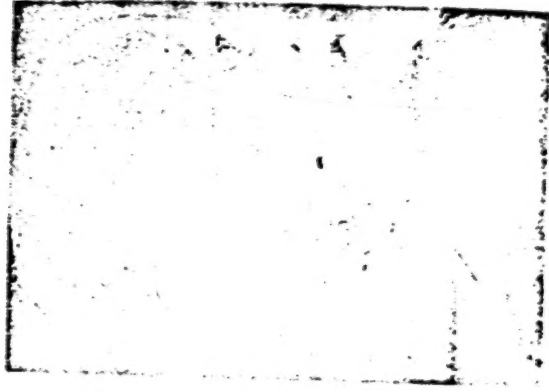
she has been serving as warden since 1963. If there were true to do as reasons to be given for denial of parole; more halfway houses; work release programs for qualified inmates; more case-workers on the staff; more psychological counseling; more vocational training; better education within the institution; published standards for changing inmates' level of restraint; unlimited mail; disinfectant for all cottages; reasons given for severe discipline, and so on.

But at some point, Mrs. McLaughlin decided the strike had gone on long enough. She called in help from other federal prisons. Male guards went through the campus, used tear gas, rounded up a predetermined list of inmates thought to be ringleaders, put them into a waiting bus (by mistake including one staff member), and transferred the women to maximum security institutions in Ashland, Ky., and Seagoville, Tex.

Mrs. McLaughlin refers to the strike as "an emotional binge" and the result of "two or three very troubled people; our psychiatrist says that we have about 50 people who are in and out of psychosis all the time." But the demands were consistent with what most correctional administrators are themselves asking for, at least when outside their own institution.

Nevertheless, Alderson is a far more humane institution than the average state and county prison for women. Elsewhere there are female prisoners subjected to terror and degradation and, the same kinds of psychological pressures that afflict male prisons.

Tom Murton was a warden in Arkan-



VIRGINIA McLAUGHLIN  
... sophisticated warden

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-3-

...as who unearthed murdered inmates and tried to reform the institution-alized savagery before he was fired by Gov. Winthrop Rockefeller. Because prisons are typically closed institutions protected by secrecy, their worst characteristics usually come out only with a riot or after an administrator has been fired.

A warden who preceded him at Cummins prison farm, Murlton says, had an electric buzzer installed next to his bed in the warden's residence on the grounds of Arkansas State Penitentiary. When he pulled the button, the staff would select a woman inmate to go to the house to perform sex acts on the warden.

Black women were forced to "clap" grass on the prison grounds with their bare fingers, and for meals were permitted to eat only whatever white women prisoners left behind them. Women prisoners were beaten with leather straps.

When prisoners under sentence to the state prison were transported from the local county jail, all the prisoners—men and women—were put in the same covered van and it was usual that the women began their prison term by being gang raped in the van.

Lawsuits claim brutality to women in some men's institutions that match those in women's institutions. In Louisiana, seven women prisoners brought suit recently in a federal court claiming that at the state prison the seven women were punished by being beaten, stripped to their underwear, three of them handcuffed together in one cell, four of them handcuffed together in another cell, and passed repeatedly with a spray that burned their eyes and made it difficult for them to breathe, and that this went on for four days.

Last October in Miami, a civic committee of business and professional women protested "inhuman living conditions" for female prisoners in Dade County Jail.

The committee said women, often incarcerated for months, had total recreation facilities consisting of one incomplete deck of cards. It said 10 women lived in one large cell, rain leaked through windows soaking beds, very young girls in jail for their first time were left alone with experienced older prisoners and no exercise was permitted for weeks at a time.

In Michigan, Carole Morgan, a teacher for two years for women prisoners in the Detroit House of Corrections, said that an 18-year-old girl prisoner, finishing her term on a drug charge, once came to her hysterical because shortly before she was scheduled

for release she was visited by a detective from the city narcotics squad who told her that if she did not become an undercover agent for them they would make sure that she served more time in jail.

### Listening to the Inmates

Jane Meyerding, 21, was held in Monroe County Jail, N.Y., while being tried on charges arising from raids on Selective Service and FBI offices in Rochester. She said she and other women were stripped and searched before and after each court appearance, a process in which they did not register but did not cooperate.

"When we were convicted and brought back to the jail they had a real field day ... There was a man there when we were searched ... The men brought us up the stairs and when it was my turn he put the handcuffs on me and dragged me over to where they wanted to strip-search me. He didn't take too much part in the actual stripping because I was just being passive ... During the trial I wrote the judge a letter and he told the marshals to come over and stop the strip searches. But after the conviction they started all over again."

Compared to the institutionalized cruelty and neglect typical of many women's prisons, the residents of Alderson are fortunate and the experienced ones (60 per cent have been in prison before) know it. But even there they suffer destructive anxieties and psychological pressures.

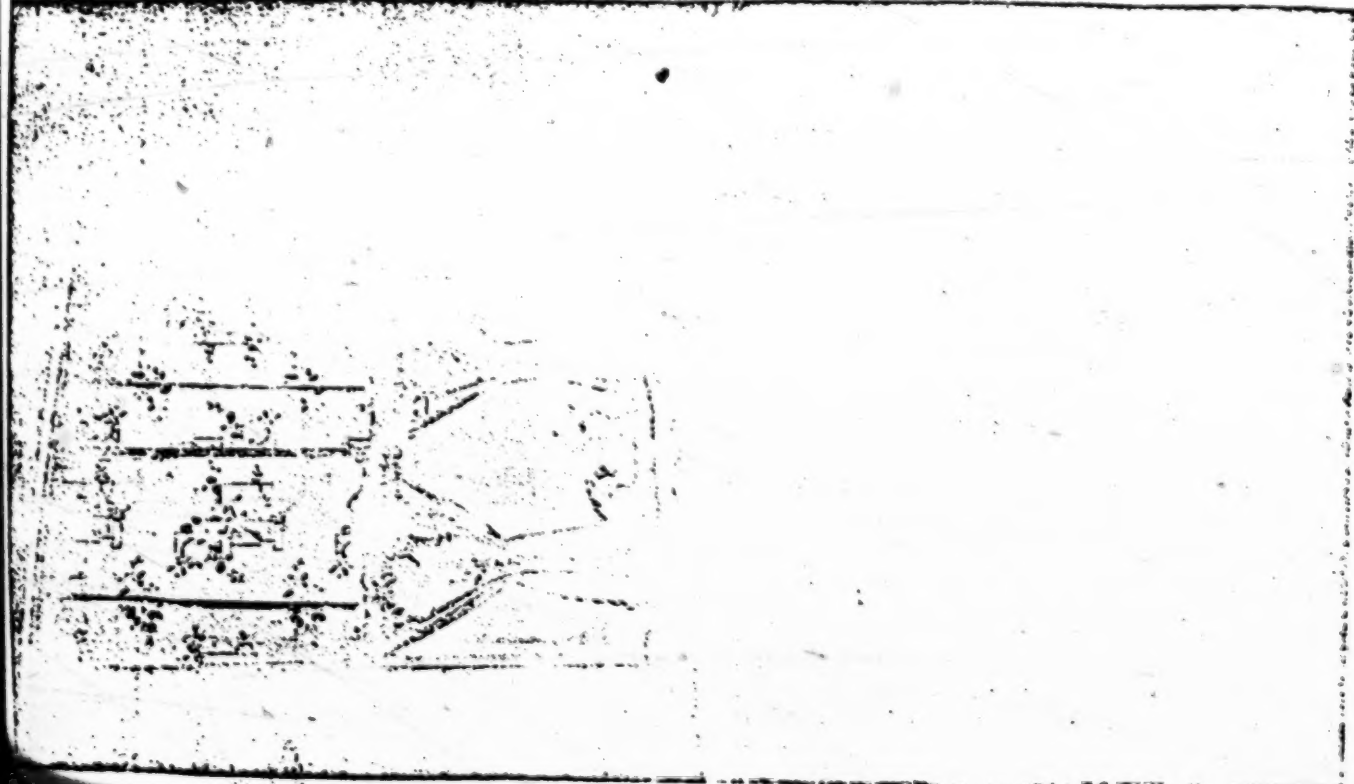
For about an hour, the Resident Council, two women elected from each dormitory, discussed their anxieties. About 23 gathered around a long, polished table near the warden's office. Some of the women were stylishly overdressed, the others casual and cool. The accents ranged from Deep South black to university British. To the casual eye, it could have been the board meeting of an integrated middle-class PTA.

Some of the bitter complaints would require relocation of Alderson. For example, the separation of women from children because of Alderson's remoteness and lack of public transportation. Of twenty-eight women, 22 raised their hands when asked how many had minor children. When asked how many had not seen their children since their imprisonment, the same number of hands went up.

But the most bitter and impassioned complaint would take no revolution: quick response on parole applications, together with a detailed reason for denial of parole. At stake are years of a woman's life, but present procedure is casual.

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Curtains brighten a woman's room in the Alderson, W.Va., prison.  
By Margaret Thomas—The Washington Post

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A parole examiner visits the institution and interviews the prisoner in sessions that inmates say range from three to five minutes, with a few 10 or 15 minutes. Then there is silence for up to four months. If the parole is denied, there is no reason given except, possibly, "lack of progress."

Nothing causes more frustration in prison than the mysterious and indefinite working of parole boards.

As one young woman, interviewed at random in her dormitory, said, "I got five. I know I did wrong. I'm doing good time. I take courses. I have a good record here. My mother is taking care of my kids. I get no answer from the parole board except not enough progress."

"I ask what that means and they can tell me. Why keep trying? I mean, if you want to drive someone crazy, then put them in an institution and never let them know when they're getting out."

In that respect, men and women in prison have a common experience.

Next: The initiation — juveniles.

## The Sumo of the Prisons

# Juvenile Prison: Society's Stigma

### Fifth in a series

By Ben H. Bagdikian  
Washington Post Staff Writer

The price list is posted in big red letters for every kid in the classroom to see. Coffee break? \$10. Sit in the teacher's swivel chair for a whole period? \$20. Take a trip to the library for a book? Only 50 cents.

Get out of here early? \$7.95. You don't have the money? Just sign one of these contracts. "I will remain in my seat during the last-ward period. I will not talk to other wards . . . up to \$50 payment. "I will not fight with Chien over the TV program"—\$100. "I will write out as closely as I can remember exactly what I said and exactly what Chuck said when we fought and then I will write out what I could have said to avoid a fight and still get my bednet, acetone."—\$300.

The assorted young burglars, car thieves, murderers, rapists and robbers are being "paid" to behave the

way the state of California wants them to.

They are not charged or paid United States dollars but "Karl Holton Dollars," the medium of exchange in the place. But in Karl Holton Dollars they really mean it. Coffee can cost \$40, a pool game \$85, a five-minute phone call \$150, an afternoon nap \$23.

Each boy carries a small blue book, "Karl Holton Bank" with his savings listed. His daily expenditures and pay are also posted publicly so that no private deals are possible.

Karl Holton School is a prison for boys in Stockton, Calif. It's surrounded by a 14-foot chain link fence, the top four feet of sheer metal to frustrate agile climbers (it doesn't; the boys turn the tines of forks and grapple their way over the top). There are almost 400 juvenile criminals inside.

A couple of football fields away is another prison for boys, constructed to be almost a mirror

image of Karl Holton. It is the O. H. Close School, with about the same population. But it has an entirely different and similarly innovative philosophy of treatment.

Side by side, these \$25 million experiments are symbolic of the desperation of a society bewildered by the defection of its youth. The most distressing criminals in the United States are its juveniles—as young as 7, mostly in the mid- and upper-teens.

One in every six American citizens is a child between the ages of 10 and 17; three of every six arrests for serious crimes are of someone in that age bracket.

Crime rates among youth are alarming in every segment of the country—both boys and girls; inner city, suburban and rural; rich and poor; white and black (though, as with adults, the poor and the black, after arrest, are sent to court and prison more often than affluent law breakers).

See PRISONS, A12, Col. 1

# The Failings of All Society

## PRISONS, From All

Once juveniles are convicted, they do worse than adults. From 40 to 70 per cent of adult prisoners repeat crimes after their punishment; from 74 to 85 per cent of juveniles do so.

The dismal record of juvenile "corrections" is especially frustrating because it deals with presumably pliable youths still forming their characters.

An alarming number of juvenile criminals apparently want to kill themselves, either directly by drugs or engagement in suicidal violence, or by symbolic death through repeated imprisonment.

What happens to these imprisoned youths raises questions about the society that produced them. All over the country, the men and women who run juvenile institutions say similar things, typified by:

We inherit the failures of all the other institutions of our society, the failure of our homes, of our schools, of our churches, of our economy. We get the products of a culture that worships material things—money, cars, clothes—and of a culture that glorifies violence and sanctifies guns. And what can we do about the father who's an alcoholic or the mother who's a drug addict, or the uncle who's a child-beater, or the 10 to 30 per cent of girl offenders who have been the object of incest with their fathers and stepfathers? And what do you expect when our graduates go right back into that environment?

They are profound questions. But they do not relieve the institutions completely. Once juvenile "homes" receive convicted youths, a large proportion of the institutions do things for which the law would prescribe a punishment:

Lock the in terrifying isolation; beat them; put them into circumstances in which forced homosexuality is predictable; forced them into lesbian and lesbian; force them to associate with promoters of violence.

One expert in criminal justice said, "Juvenile corrections isn't better than adults, it's just more hypocritical."

There are still juvenile jails and prisons—"halls" or "homes" or "camps" or "schools" or "centers"—where the chief instruction for a new guard—"counselor" or "correctional officer" or "dorm leader"—consists of how to rough up a juvenile without leaving marks; always use forearm and whole body, never fists or feet.

Most places are still crime schools. Let me tell you a little story, an experienced worker in corrections said recently. "We were in a new, nice-looking jail in the northwest and interviewed two 14-year-old girls sitting by each other. We asked the first girl what she missed most and she said, 'Speed and men.'"

"Speed" is the street term for methedrine, a chemical stimulant that increases heartbeats and raises blood pressure and in large doses produces hallucinations and sometimes death.

"We asked the second girl what she missed most. She obviously was not interested yet in speed or men. But she



RICHARD KOLZE

...everything in the open

was a very unhappy girl and we all felt that it was almost certain that the moment the second girl got out of jail she would rush to find comfort in speed and men."

### Overcrowding and Brutality

In Miami last October, the director of the Dade County Youth Hall admitted that the jail was built for 52 but now held 250 and it was necessary to put juveniles in the same room not by offense or personality but by physical size, so that each child would have a better chance of defending himself physically.

"There's just not enough room to do it any other way," Everett Cline, the director said. "Many of them are runaways, many have drug problems. I wouldn't doubt it if a few were prostitutes. There wouldn't be any way to keep them from teaching these things to one another."

In Detroit last November, lawyers brought suit against the Wayne County Youth Home on behalf of five children who were jailed only because they had been abandoned by their parents or had been taken away from parents who were brutal or alcoholics. Once in the protection of the state, these children, the suit claimed, were placed for as long as three days at a time in a bare cell with only a mattress and a toilet, punished by being forced to stand with arms outstretched and not move for hours, and struck on the head with keys.

They allegedly received these punishments for speaking without permission, not answering questions fast enough or looking out of windows without authorization.

Several weeks ago, a 16-year-old delinquent posing as a 16-year-old delin-

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Coffee Break 10 min 1 cent #40  
 Outside Break #15 per 5 min  
 RE Center #1 per min  
 Teachers Chair #20/period  
 Trip to Another Class #200  
 Trip to Library for Books 50¢/min  
 Listen to Tapes 2/min  
 Trip to Hall #5 per min

The price list at Karl Holton School.

quent, entered the John J. Connolly Youth Center in the middle, Mass. and wrote in the Boston Globe that the place held 200 boys though built for 22, and that staff members held boys reads under water for punishment.

Two boys found talking without permission were punished by having to run between two lines formed by all the other teenage inmates. The other inmates were required to punch the offenders with a closed fist between the wrist and the shoulders. If any boy in the line failed to hit the two boys, he would then have to run the gauntlet himself.

How many juvenile centers are run like this is unknown. It is a world closed to the public and to the press. When there are visits, it is usually during hours when the inmates are in classrooms, thus centering attention on the clean hardware and concealing the extent of overcrowding.

There are many humane and purposeful juvenile institutions but they tend to be the ones most eard about because they are less secretive.

State and local programs are varied and unlike rated. The federal government, which presumably would have the most sophisticated talent and the most money, is fragmented and disorganized in its programs.

#### California's Two Experiments

Though 43 per cent of arrests for serious crimes are of juveniles, the chief agency for juvenile corrections research and support, the Law Enforcement Assistance Administration is spending less than 15 per cent of its budget on juvenile delinquency. Work on juvenile delinquency is scattered among a multitude of nine different federal agencies, ranging from the Department of Housing and Urban Development to the Department of Agriculture.

This is why experiments like the two centers in Stockton stand out by contrast. There is the latest attempt in a long search.

For decades, waves of new approaches have washed over millions of troubled children. It began with moralistic instruction, preaching at bad children to be good, still a popular prescription for making adults feel better. Some places concentrate solely on vocational training, though usually in an obsolete or depressed trade.

Some spend most of their time testing the child and making sophisticated analyses. Or they concentrate on academic achievement.

Others believe that what the bewildered soul of a child needs more than anything else is fresh air and competitive sports.

Psychiatry in its various forms dominates some institutions, including every conceivable application of counseling and group therapy.

None on their words. Or at least none works if the measure is that most of their graduates will thereafter avoid arrest.

Richard C. Kolze, superintendent of the Karl Holton School, does not pretend that the "Karl Holton Dollars" will buy guaranteed solution either, but his institution is permeated by a religious devotion to trying it.

The theory back of it is "Behavior Modification," a practice that accepts the fact that either we do not know why human beings do the things they do, or if we do, there isn't much we can do to change people by rearranging their thoughts and emotions. It aims at a seemingly modest goal: when ever the causes, just change actions, reward behavior you consider good, punish what you consider bad. Since it is known that punishment produces minimal learning, the emphasis is on reward for desired behavior.

From the first moment a convicted boy enters Holton School he gets a contract, a formal written agreement signed by him and his counselor, providing so many Holton Dollars for certain performances.

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The "Get Acquainted Contract" says, "During my first week, I will: 1. Introduce myself to every staff member on my hall team; 2. Carry on a 5-minute conversation with every staff member on my hall team; 3. Following each conversation, get the signature of the staff member; 4. Learn the name of every staff member on my hall team; 5. Name (from memory) each staff member on my hall team to my assigned counselor. For this I will receive: 1. 75 points for each signature obtained; 2. 25 points for each name remembered. Some contracts are for "convenience behavior"—managing time well, relations with other inmates, getting out of bed on time, finishing meals on time. The boy must earn \$3,525 this way.

Other contracts are for academic achievement. All instruction is individual, so the boy can move as fast as he wishes, contracting only with himself. He gets 1000 Dollars for good grades, completing tests properly and other tasks related to schooling. He has to earn \$2,500 that way.

Finally, he has Critical Behavior Deficiencies to earn dollars. Each month, three staff members and the boy himself fill out a checklist of 20 items believed to be important in predicting how a person will do on parole. These include the number of contracts filed and satisfied, various measures of "positive behavior" and the integrity of the boy in doing his tasks. He must earn \$2,100 this way.

#### Like the Real World

The second discovered that it had created a replica of the economic world and now need a full-time economist. The recordkeeping is overwhelming. Dollars earned are computed on the spot and reports sent to a central accounting office where debts and credits are calculated and posted. They plan to get a computer.

"There are some things we have to watch out for," Kelly says. "We limit the number of 'Dead Man Contracts' that the boy earns for simply not doing something bad. Otherwise, of course, he'll do a lot of bad things so he can get credit for stopping them."

"We watch the contracts the staff writes all the time. Everything depends on the quality of the contracts. If a kid gets dollars just for keeping his shirt tucked in or for going to church, they all we have here is a funny game. But if you contract with the kid to analyze why he's angry at his mother or fights with the other boys, then it means something."

"You see, this puts everything out in the open. The staff can't play games with the kids or the kids do it with the staff. You know: 'Let's hit Mr. Jones up for a favor, he's in a good mood today.' The kid knows what's expected of him and exactly where he stands. There's no guessing, no subjectivity."

"We don't let the staff write up bad attitudes. They can't threaten anything if they have a problem with a kid it's up to them to handle it some other way."

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"We keep a constant analysis of dollar flow patterns. For example, if some kid is accumulating too much money and not spending it, we know that he's getting too rich and won't have to work. We look at what's selling in his hall—maybe pool is a favorite pastime or phone calls, it varies from hall to hall."

"In some halls, private rooms are the big thing. In others sleeping in. Whatever it is, when some kid in a hall is saving up too much, we raise the prices on the popular items in that hall. We cause inflation so he has to work harder."

Just like the outside world?

"Exactly."

How do you know that the kids won't learn how to manipulate the economic system?

"They aren't smart enough to do that."

Boys pay rent for private rooms—there are dormitories and private rooms in each unit—but they get dormitory beds and meals "free."

"We tried to charge for room and board but it wouldn't work because it meant inevitably that some kids wouldn't be able to pay. And obviously we weren't going to keep them from food and board, so we'd have to have a welfare system. We planned that, too. But it got so complicated it over-loaded the system. Besides, we couldn't sell the welfare system to the other kids who wanted to know why they should give up 10 per cent of their bank account."

Just like the outside world?

"Right."

#### The Catch Is Parole

When the Holton School inmate has earned \$7,575, he is eligible to apply for parole. But there is a catch. Despite all the daily computations, data processing and elaborate manipulation of the economy, when the big prize has been earned, it is simply eligibility for parole. The real pay-off, the parole, is run on a different system.

"We measure everything on performance of the young man," says Kolze. "But we're dealing with a parole board that is time-oriented. We feel that a lot of our boys could move out of here much sooner. But the board disagrees because they consider the original offense and the amount of time spent in the institution."

A brisk walk from the gate of Holton School is the O. H. Close School, the same kind of physical plant with roughly the same number and kind of boys. "We have everything here," Harold Richards, the superintendent says. "You name it, we've got it—burglary and auto theft are the biggest offenses, but we've got child molesters, murderers, armed robbers, rapists..."

Close School is devoted entirely to Transactional Analysis, self-examination based on the assumption that each person has within him three major approaches to life: a built-in Parent, who reacts emotionally; and a built-in Adult, who is a creature of facts and logic. These interact within the individual, causing him confusion. And each person's three ego states interact with other individuals' three ego states, causing a variety of hidden messages and games between people. (A basic book on the technique is Eric Berne's "Games People Play.")

"What we would hope for," Richards says, "would be that a kid by the time he left here would be able to plug into his own mind before he does something to evaluate the situation before he acts, to find out, as we say, what ego state he's in when he is about to do something."

Instead of the price lists of "Holton Dollars" in the institution across the street, Close School has posters poking fun at games inmates play. "Let's Make Counselor Sorry" and "Look What They've Done To Us" and "I'm Just a Typical Teenager." The staff isn't immune: "After All I've Done for You—" and "I Let You Go On a Furious and Now See What You've Done" and "Kick Me."

Games, in transactional analysis, are a series of secret messages with a gimmick designed to produce some emotional payoff. The best emotional state and the motto of the technique is, "I'm Okay, You're Okay."

#### A Life Script Questionnaire

When each of the 390 boys enters the school, he fills out a Life Script Questionnaire designed to give insight into the boy's conscious and subconscious expectations for himself.

"The number of kids who have a lifetime script, a violent death, or a lifetime spent behind bars of some sort is just incredible... Usually a life script is a reflection of what parental expectations were... Many parents unconsciously want their kids to fail. They unconsciously want them to take drugs, for example, even as they say, 'Don't take drugs.' The hidden message is, 'Do take drugs.'"

The staff described one boy committed for forcible rape.

"A brutal crime," Paul McCormick, a worker at the school, said. "A gang of kids grabbed a couple who were up in the hills necking and they robbed the guy and raped her."

"This boy was unaware that he had any anger in him. I finally got him to see that he had brutalized another human being, a complete stranger, so it's an evidence of some kind of hate or anger within himself and not related to that particular girl. That it's in him."

"He wasn't aware of it, but he had been programmed by his mother and father from about the age of 12, who kept saying, 'Now don't get in trouble' when they were really telling him all the time, 'You're the kind of kid who's gonna be bad, bad, bad'... What's the worst kind of bad? Rape."

"Well, it's kind of ironic because I got busted for rape and I could have been with my girl friend that very night, and we could have been balling the way we always did."

He says that his companions kept urging the rape. He wanted to return home. But in the end he led the group. He said he didn't enjoy it.

Why do it if he didn't enjoy it?

"It didn't strike me in my mind as forcible rape, kidnap and whatever else. No, it didn't strike me as that."

"I was with my friends and I could only explain this through what I've learned here about myself. I needed strokes—my friends said things I liked. I went along with the group."





Teacher-teaching in the classroom at Karl Helton School.  
By Anthony Lewis—The Washington Post

"I relied more on my friends than I did on Mom and Dad. . . . All my Mom and Dad would do would say that everything I did was wrong. They'd always be, 'You're gonna get in trouble.'"

"And I never thought much about what I would do in the future. I wanted to be out of the house. I wanted to go to parties. I wanted to have chicks. I never thought much about it. I never had any insight into myself until I came here."

He spoke softly.

"I don't have to please nobody. I don't have to make anybody love me or hate me. If I reject stealing a car that my friends want to take, it isn't that I reject my friends, but just the idea of stealing. After that, if they want to reject me, then I can say, 'F— you.' Now that's a change because before I had to go along with my friends. Same as with my Mom and Dad."

"Does it work? Does it work better than behavior modification across the street? Nobody knows. Typically of correction systems nationwide, California spent \$13 million to build the two institutions and has spent \$22 million operating them but didn't appropriate research money to measure their relative effectiveness. The federal government had to do it in a study still in progress."

Superintendent Richards was asked whether it was possible that he was merely predicting more insightful car thieves and rapists.

He shrugged.

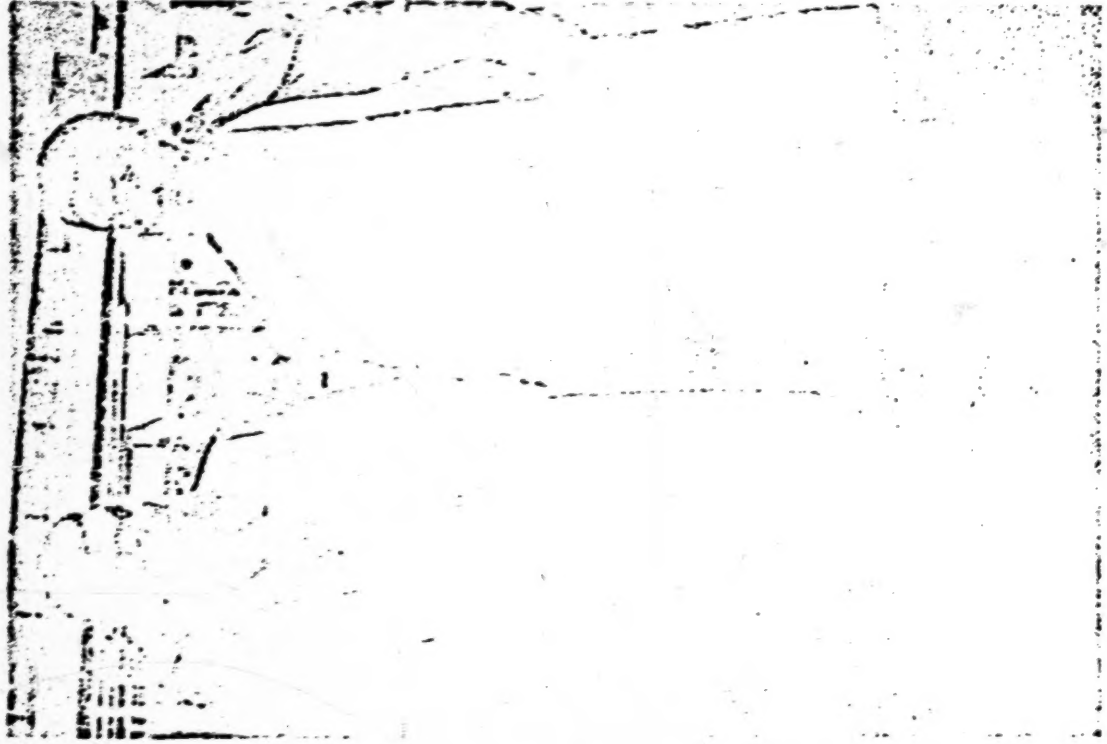
"We don't know. But I have trouble believing that we are not doing some good. I think it's justified to use the medical analogy of treatment: you don't measure it by sudden cure but by the number of relapses. I'd be surprised if our kids don't have fewer relapses. But we just don't know. We won't know for a long time."

NEXT: The District of Columbia system.

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The Shame of the Prisons

## Rehabilitation: A Frayed Hope



The Lawrence Smiths—father and son—in Lorton.  
By Matthew Leight—The Washington Post

Sixth in a Series

By Leon Dash  
Washington Post Staff Writer

The 12-year-old boy thought he was alone in the dormitory of Cottage 7, sweeping under the beds. But he wasn't alone. A creaking wooden floorboard caused him to turn. A 14-year-old fellow inmate of the old Industrial Home School for Colored Boys (now Junior Village) was sneaking up behind him.

"He said he'd been watching me and said I was either going to fight him or let him have sex with me," Lawrence Smith Jr. recalls.

Smith retused. The bigger boy grabbed him. Smith pushed back. They fought and Smith says he won that battle.

This was one boy's introduction, 18 years ago, to the world of District of Columbia "corrections"—to sexual assault, fights and beatings behind the walls of institutions where juveniles and adults from Washington have been sent for the announced purpose of being rehabilitated.

In the years since young Smith was first locked up, the D.C. prison system has undergone drastic changes. There have been pioneering reforms that others have seen fit to duplicate.

But today Smith is back in prison. There he joined his father, who preceded him into prison. And while the Smiths' history is not necessarily typical, it tells a lot about the prison system in the District of Columbia.

The longest period the younger Smith (who calls himself Smith-bev) has spent outside of jail since the age of 12 was eight months. He is now 30.

His father, Lawrence Smith Sr., now 47, has just completed more than 12 years at Lorton for the sale of narcotics and for parole violations.

Smith Sr., who was addicted to heroin early in adult life, typifies an older generation of unskilled, undered-

See PRISONS, A14, Col. 1

# Of Stopping Recycling

## PRISONS, From A1

reated criminals. He talks in a dry, even monotone which lacks the rhetorical cadence and hostility to the "establishment" characteristic of many of the younger Lorton inmates.

In December, 1958, while his son was still at National Training School, Smith Sr. was released from Lorton with \$45 and what he describes as an "old cult," after serving a three-year sentence. His wife and five other children were living on welfare.

During most of his stay at Lorton, Smith Sr. had worked at a grinder in the institution's old foundry—smoothing the rough edges of sewer pipes, fire hydrants and police callboxes that were being made for the District Government. "Jack in those days," the older Smith said, "we were only making \$3.60 a month."

Upon release from Lorton, Smith Sr. recalled, there was no sense in looking for foundry work like that he had been doing for three years at Lorton. There were no foundries in Washington. It wasn't too long, he said, before he was back to using heroin and selling it to support himself and his family.

His son, Smith-boy, is representative of the younger Lorton inmates. He is six years old at Lorton today. He is six years over the average age of the Correctional Complex's 1,200 inmates, which is 25, but made it at a level of education is the same as Smith-boy's—eighth grade.

The younger Smith has spent most of the last 16 years of his life in various hospitals; after the Industrial Home School, then Cedar Knoll in Laurel, Md., the old National Training School for Boys, three Federal prisons, the Federal drug treatment hospital in Lexington, Ky., almost four years under psychiatric care at St. Elizabeths Hospital and the Lorton Youth Center.

He finally joined his father at the Lorton Correctional Complex last summer following conviction of armed robbery, assault with a dangerous weapon, and carrying a concealed weapon. Sentenced to five to 15 years, he'll be eligible for parole when he is 25 years old.

As it happens, Smith-boy's father's sentence expired Jan. 20, following the longest single period he has seen his son since 1951. But Smith Sr. is facing a fresh indictment from 1970 of conspiracy to sell drugs while he was out on parole.

Whatever the differences between father and son, there are important similarities. With the exception of some clerical work the father has done at Lorton, both men lack marketable skills after almost two decades of jail sentences.

And both father and son ended up at Lorton. Stories such as the Smiths' are not uncommon among Lorton's inmates, Fathers, and sons, brothers, cousins and childhood friends have all, together or separately, passed in and out of Lorton's main gate.

Although there are no statistics a large number of the 2,200 inmates at Lorton's Correctional Complex, maximum security facility and Youth Center have been recycled through the District's juvenile delinquent institutions only to end up, finally, as young adult offenders at Lorton.

The two Smiths typify the depressing cycle of crime and imprisonment, more crime and more imprisonment that seems to characterize the graduates of District reform schools and prisons. The products of chaotic, unproductive backgrounds, they drift into crime and serve time in "correctional" institutions where their problems deepen and they get no practical skills.

### The Pressures of Change

That history illustrates something else: the acute political and public-relations pressures aroused within a community when a prison system tries to change.

In the last four years, the correctional department has undergone drastic changes. They were directed, first and with apparent success, to reducing the incidence of riots, racial battles, homosexual assaults and other destructive forces inside the prisons.

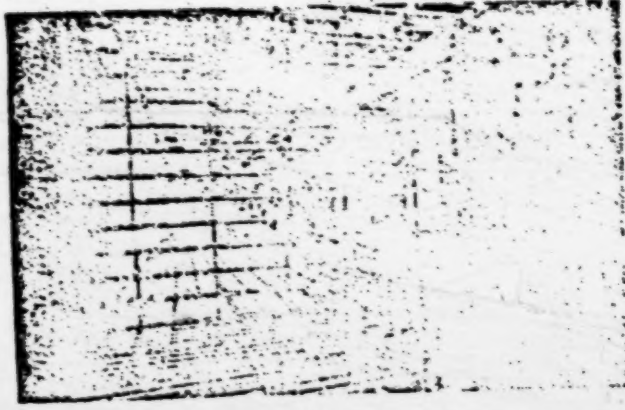
More important, the reforms have tried to alter the endemic recycling of former prisoners back into crime. This has been the major concern of the D.C. Department of Corrections since the mid-1950s.

A prison sentence can break up a home and impose a stigma to the shame and burden of welfare dependency, and it can increase the chances that the children will turn to crime. It can compound problems of alcohol and drug addiction.

The reforms have had several aims. They have been directed at gradually letting prisoners get used to freedom

they will have after they have served their sentences. Another aim has been to teach them skills that will earn them money legally. There have also been efforts to give the prisoners guidance in the personal problems that might have caused their criminal careers in the first place, and which may have been deepened by the experience of being locked up for long periods of time.

The department's innovative programs have been aided by Lorton's location near this city. Most state and federal prisons are in rural areas far from inmates' families and remote



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and qualified staffs. But of the Lorton inmates, over 80 percent of whom are black, have no family ties in Washington. They have no community ties in Washington, an important element of community-based correctional efforts.

Prison director Kenneth L. Jones says convicts should be released from prisons gradually through pilot projects that give them a chance to adjust to life outside of prison. "Release a man gradually," Jones said recently. "Give him a chance to re-establish himself, find a family."

Community-based programs, which send convicts back onto city streets after their sentences are completed, have drawn harsh criticism from the District Police Department and the District government, as well as private citizens.

A major issue is new crimes committed by convicts while participating in one of three community-based programs: halfway houses, weekend furloughs or "community projects" such as group visits to put on dramas.

#### For Halfway Houses

Some of the department's problems are being pointed out by Deputy Mayor Graham and Police Chief Jerry V. Wilson. City lawyers now on the City Council, including Mayor Ted Mosier, point to the use of persons as the basis for community programs, which expose Washington's citizens to a necessary danger.

One of the major points of dispute is the halfway house, which expanded from one in



JOHN O. BOONE  
... on the defensive

the fall of 1969 to 13 by June of last year. Part of a police report issued last November lists re-arrests of 34 halfway house residents and of 18 halfway house escapees between July and September.

The combined total of 52 new arrests represents fewer than 10 per cent of the 613 convicts who lived in halfway houses during the three-month period, and of the total, 43 were charged with lesser crimes. But three were charged with homicide (a major sore point with critics) and six with armed robbery.

An October corrections department report says that 51.6 per cent of the men who go through halfway houses were not arrested for new criminal ac-

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activity. The rate among inmates directly released from Lorton is 80.8 per cent.

"These figures tend to prove," said Stuart N. Adams, the corrections department's associate director for planning and research, "that our halfway house program is working."

But Blair G. Ewing, former director of the city's office of criminal justice plans and analysis, said Adams' statistics give an unclear picture of what is happening inside the halfway houses. Ewing, a consistent critic of the house, said that if there is still an incidence of 23 to 29 per cent of drug use and a 24 per cent rate of escape, then the program is not working as it should.

The central argument about halfway houses is simply not answerable now. Defenders say, in effect, that almost all convicts will be back in society one day, that halfway houses appear to reduce the incidence of repeated offenses and that, therefore, society is better served by such efforts to reintegrate the inmate into the outside world.

Critics, in effect, base their case on the simpler truth that halfway house residents couldn't commit any of these crimes if they were still in Lorton.

Until the data are sufficient to show whether the total number of repeated offenses is reduced or increased by halfway houses, the argument is likely to go on.

Other pieces of evidence are elusive, too. In the past, for example, Allen M. Avery, associate director of community services in the department of corrections, has claimed that most of the problem in halfway houses was residents who had been committed either by the courts or through the District's bail bond agency.

But a breakdown supplied on request by Avery's office showed that 43 of the 52 men rearrested after they had been sent to halfway houses had come either from the Lorton Youth Center, through the parole board or on the recommendation of counselors — and Avery's office has a voice in each of these. Only five of the 52 re-arrested men had been committed by the courts and two were bail-bond felons.

Asked why the data differed from his previous statements, Avery said that in the future a closer check would be kept on how inmates are committed.

#### Other Community Programs

The rapid expansion of community projects and other innovative programs began in 1969 following a disturbance at Lorton the previous year.

Two penologists identified with reintegration programs, M. Robert Montilla and John O. Boone, were brought into the corrections department with a mandate for reform.

Consistently on the defensive over the last year, both Montilla and Boone insisted their programs had real rehabilitative value that would reduce the number of such classic examples of criminal recidivism as the Smiths. But both men, angered by criticism of their programs and apprehensive about reversion to old custodial policies in which prisons simply hold people until the end of their sentences, resigned at the end of last year.

Last July, Boone was ordered to stop the furlough program. Following 21 drug overdoses and one drug overdose death at Lorton, all of the community-outreach programs were also halted on grounds that these could have been the way convicts got the drugs. Those community-outreach programs in which Lorton inmates make trips to Washington to work with District youths have since been resumed on a restricted basis.

Corrections officials had been pushing community efforts in part because of overcrowding in all of the District's prisons. The renewed overcrowding if the community programs end will lead to a breakdown in their rehabilitative efforts within Lorton, they claim.

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The Lorton complex is 21 miles south of Washington in Fairfax County, on the outskirts of Northern Virginia's suburban sprawl. It was built as the Lorton Reformatory in 1916.

## D.C. System's Final Stop

The last stop in the District of Columbia system of criminal justice is the Lorton correctional complex for adult offenders.

Built as the Lorton Reformatory in 1916, the complex is located 21 miles south of Washington near Interstate 95. Just on the outskirts of northern Virginia's suburban sprawl, perched on top of a hill in undulating Fairfax County farmland, the complex's 7,000 acres are surrounded by a 25-foot high chain-link fence topped with barbed wire.

Among inmates, it is known as "The Hill." It has 25 dormitories designed to hold 1,400 prisoners.

Next to "the Hill" is a maximum security prison on 19 acres of land surrounded by a 20-foot high brick wall. Known as "the Wall," the maximum security prison has three double-lined cellblocks in which about 300 inmates spend up to 24 hours a day.

A half-mile away in a grassy 38-acre hollow is the Lorton Youth Center. It is surrounded by two chain-link fences, 15 feet apart, topped with barbed wire. There are four buildings with 324 one-man rooms. An admissions building doubles as a dormitory when the number of youths goes above 324, which happens often.

A section of the old Workhouse is now the fenceless minimum custody institution. Located a mile south of the Youth Center, minimum custody has three 100-man dormitories.

Former Lorton superintendent Boone said that idleness, a feeling of hopelessness and lack of motivation caused by "warehousing" prisoners, create tensions that lead to strife among inmates.

Programs such as evaluative furloughs or Lorton's Federal City College program provide inmates with high levels of motivation, Boone said. "A man doesn't want to get a DIT (disciplinary report) and thereby lose his privileges," Boone added.

The future of the community programs is now unclear.

All community programs, Deputy Mayor Watt said in a recent interview, will remain in their present status until five-member mayoral committee, chaired by former Corporation Counsel Charles T. Duncan, completes a five-month study of corrections.

What the committee decides will affect not only future prisoners at Lorton but also the citizens of Washington whom Lorton is designed to protect.

The committee's choice is personified by the lives of Lawrence Smith and his son, Smith-ley. The father was kept behind bars as much as possible — arrested first at age 23 and in jail and prisons for 12 of the following 18 years and back in prison again until last January.

And one of his sons has been repeating the same cycle. While father and son were behind bars, the citizens of the District were protected from them; but when they emerged they repeated crimes at an accelerated rate.

The District of Columbia, like the country at large, is now deciding whether the greater threat is to keep criminals off the street as much as possible and then suffer the consequences when the offenders come back, or to have them serve shorter sentences with more time spent in teaching the offender how to live legally and peacefully, with fewer relapses.

NEXT: A new kind of prisoner

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# The Drive for Inmates' Rights

Serenth of Eight Articles

By Ben H. Budnikian  
Washington Post Staff Writer

"It used to be that the favorite recreational activity of prisoners was playing baseball. Now it's filing lawsuits," says Elyse J. Younger, attorney general of California.

Is there a new kind of prison behind bars in the 1970's? More interested in politics than athletics? More militant, organized and rebellious?

Younger is right about the growth of civil petitions flooding out of prison cells into courthouses. For a long time the traditional jailhouse punishment of criminals, which consisted of solitary confinement, was civil settlements. The new phenomenon is civil settlements suing prison officials for allegedly violating human and civil rights.

In 1963, federal courts received only 623 such petitions from prisoners, less than 2 per cent of all federal civil suits that year.

Last year there were 12,954. By now, one of every six civil suits in a federal district court is from an American prisoner claiming that his treatment in the penal institution is illegal.

Elyse Younger is wrong about this point: "Prisoners are not active." Prisoners have been just as active.

Judges all over the country, confirmed when they get conditions to which they have condemned defendants, are dropping their traditional "hands off" policy toward prisoners and are taking responsibility for the nature of the punishment they order.

This is forcing the freshest air into the American prison since its invention in 1794.

Judges have called some prisons unconstitutional -- for example, Holmesburg, Pa., and the entire Ark-



ansas state system. In Florida, West Virginia, Virginia, Illinois, California and Maryland, judges have declared particular prisons unconstitutional, usually for cruel and unusual punishment or administering serious punishment without due process.

Robert N. C. Nix Jr., presiding judge in the Holmesburg, Pa., case said, "Prisons aren't supposed to be torture chambers. The separation from society is supposed to be enough."

Judge Israel Augustine of New Orleans District Court said that unless the local jails ceased being "medieval and archaic" he would resign rather than send prisoners to them.

There is reason to think that American prisons are no worse today than they used to be. Except for overcrowding, they probably are bet-

ter. But increasingly inhumane conditions are no longer being tolerated, for reasons including a change in the attitudes of prisoners and of society.

1. Nonwhites in America—blacks, Mexican-Americans, Puerto Ricans, Indians—are 12.5 per cent of the total population, but they are from 40 per cent to 50 per cent of all persons in prisons. The entire criminal justice system—police, prosecution, judges, jails and prison—is largely whitewash. Ninety-five per cent of prison guards are white. Nonwhites are rebelling against their depressed status in the outside world.

2. Many impoverished white prisoners, though unsupported by organized ethnic lobbies, are newly activated by the realization that prisons are essentially places for punishment of the poor. Though there is severe tension between black and white inmates, and though many prisons do not discourage this enmity since it helps the staff maintain control over a divided population, when it comes to protest against the institution there is usually racial unity.

3. During this period of heightened sense of injustice in the criminal justice system, penalties have become harsher, increasing bitterness behind the walls.

4. Though the vast majority of prisoners is poor, there is a new, small fraction of affluent middle-class prisoners from cases involving drugs, the draft and civil protest, and this has mobilized much of the previously uninterested middle class to examine their prisons.

5. A new cadre of prison administrators is sufficiently sophisticated in sociology, psychology and statistics to be sensitive to the self-defeat-

See PRISONS, A6, Col. 1

# Aware of His Rights as Inmate

## PRISONS, From A1

ing nature of most prison punishment. Many wardens agree privately, and some publicly, with the reform demands of their inmates and feel inhibited by lack of money, political pressures and an unsympathetic public.

The most noticeable new kind of prisoner in the United States is the black militant. He sometimes appears as a member of the Muslims, the disciplined and political followers of Elijah Muhammed. Their influence goes far beyond their membership, establishing codes of conduct and attitude for many non-Muslims. Because Muslims will not eat pork, for example, many non-Muslim blacks also refuse to eat it and many prisons now serve pork substitutes.

Black militants (and some others) frequently refer to themselves as "political prisoners." It is a term that sets wardens' teeth on edge. "We don't have any political prisoners here," says New Orleans's warden of Louisiana's Federal Reformatory. "Only men who broke the law." Dr. Gerald Meyer, a leading African nationalist, says, "What has happened is that the inmate invents criminal activity with the idea that he is a part of political change. That way, you end up with the absurdity that killing a policeman or robbing a store is somehow a political act."

Blacks sometimes use "political prisoner" to refer to their degree of economic and social status, conditions that produce crime and therefore an inevitable part of "the system." At other times they use it to describe official harsh treatment, innocent of special styles of treatment they use it to describe their experience in the treatment within the criminal justice system, there is more than rhetoric connected with the concept.

The criminal justice system screens out the affluent and makes special selection of blacks. All social classes commit substantial amounts of crime. In 1977 James Robertson and Clement J. Wylie listed 29 serious crimes with a minimum sentence of two years; of 1,000 regions from a cross-section of New York inhabitants weighted toward the more affluent, 91 per cent admitted to one or more crimes without ever being arrested. Average for all men was 18 crimes each. There are not enough African blacks alive to account for unreported and untried crime.

Austin Porterfield compared criminal offenses of college students with 2,000 boys who had been sent to juvenile court; ten per cent of male and female student had committed at least one of the offenses for which the 2,000 other boys had been sent to court.

So of 1,000 crimes committed in the United States, only 20 are ever reported to the police; this is 99 per cent, or 990, which is the best part of special selection of blacks.

Entry into the criminal justice system usually depends on the decision of a policeman. It first depends importantly on where a policeman is.

Poor black neighborhoods are high crime areas, at least in reported crime, so they tend to be watched more closely. The closer they are watched the higher percentage of persons will be arrested.

Entry into the justice system can depend on the discretion of the policeman: Whether to make an arrest, and if so, on what charge, or to let the person go as innocent or with too weak evidence to prosecute. It is an important decision for the citizen because once he is perceived as potentially criminal by the authorities and once he has been picked up or booked, thereafter the odds go up that he will continue to be considered crime-prone.

It then becomes significant that surveys of urban policemen show overwhelming prejudice against blacks, 72 per cent according to a survey by the President's Crime Commission. Even where there is no conscious bias, there may be unconscious bias, an example of "the self-fulfilling" self-fulfilling prophecy of guilt: Since blacks are so obvious within the criminal justice system and because they are distinctive by their color, law enforcement officials with no personal racial bias may believe that blurring is relative to a higher probability of criminal activity. The result is that blacks enter the first crucial step toward guilt in disproportionate numbers.

A study of 10,600 Philadelphia males between the ages of 10 and 17 showed that 60 per cent of all whites had been taken into custody at some point, but more than half of all blacks.

Dr. Nathan Glazer found that of all children picked up by police, 400 are many black children as white had afterward been charged with a crime and sent to court.



Angela Davis and George Jackson: Their pictures decorate the walls of most black prisoners' cells.

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on probation may do so with the finding of "guilty" on his record if he thinks the person is a good prospect for probation success because is a first offender or for other similar reasons, he can send him on probation with no guilt finding on his record. Three social scientists analyzed 2,418 such decisions by Florida judges and found that when cases had similar backgrounds, from 40 per cent to 80 per cent more blacks were sent out with the "guilty" label than whites.

So where the system selects citizens for surveillance, for picking up by the police, for booking on charge and taking to trial, it selects a disproportionate number of blacks.

Of the original 1,000 crimes committed, 14 result in court appearances and 9 are found guilty. Practically all studies show that when persons are tried on the same charges, blacks more often than whites are found guilty. A study in Stamford, Conn., for example, found that guilty findings per 100,000 ethnic inhabitants was eight times higher for black defendants than white.

Of nine Americans found guilty in a court, fewer than four actually serve time in a prison. Here, too, whites more often get probation or suspended sentences. In the Stanford study, the rate of commitment to prison per capita for each racial group was ten times more for guilty blacks than for guilty whites.

Once in prison, blacks stay there longer, partly because they get longer sentences and partly because they get from 10 per cent to 14 per cent fewer paroles. On burglary charges in Los Angeles, the longer sentences went to blacks; sentences of four months or less, 45 per cent white, 27 per cent black; sentences of 4 to 9 months, 42 per cent whites, 47 per cent blacks; 10 to 20 months, 13 per cent whites, 27 per cent blacks. A similar time served for all white prisoners in the United States is 20 months; for blacks, it is 23.5 months.

Death sentences and executions are most plainly biased against blacks. Between 1930 and 1959, when blacks were about 10 per cent of the total population, 3,957 persons were legally killed in the United States; 53.5 per cent of them were black.

This was not because only blacks committed capital crimes. Between 1940 and 1961 in Florida, 265 men were found guilty of rape. Of the 133 white men, less than 5 per cent received the death penalty. Of the 132 black men, 35 per cent received the death penalty.

Similar bias against color appears in statistics for Mexican-Americans, Puerto Ricans and other non-whites. In addition, Spanish-speaking people suffer serious communication problems because most prisons still censor all prisoner mail and will permit only English-language letters.

The reasons for inequity of the criminal justice system toward particular society of growing complexity there are more laws against certain acts than ever before; about one-third of what we call crimes today were not called crimes in 1900. This complication of laws is selectively enforced. Lack of money is clearly a major factor—poorly dressed people often "look" criminal and when picked up by black lawyers to defend them vigorously at every stage, including the cru-

Lack of money for bail while awaiting trial is a serious detriment to equal justice. A man in jail cannot prepare as sound a defense as a man out of jail. A study of New York prisoners by the New York City Rand Institute showed that for those of comparable cases men out on bail before a trial are less often found guilty. The poor lack good legal help for appeals and applications for parole and this affects their treatment while in prison. Prisons are more careful with prisoners who have outside connections.

Inevitably, rebels against prison find a quick response among prisoners and always will. But this has special meaning now when so many blacks are conscious of the nature of their unfair treatment. George Jackson, one of the "Solead Brothers" recently killed in a shooting in San Quentin prison, and Angela Davis, a Communist professor charged with complicity in a fatal shootout in a California courtroom both black, are the two photographs most often found in cells of black prisoners in prisons where individual decoration of cells is permitted.

The issue of prisons has become a public one from a non-racial source—the introduction of middle-class convicts. A decade ago a high-income inmate was an exotic, a rare murderer or an unlikely embezzler.

But because of drugs and civil protest, the middle classes of America are now getting an authoritative view of the inside of prisons.

During civil rights demonstrations of the 1960s hundreds of college-educated white Americans found themselves herded into southern city and county jails and occasionally into a state prison. When protests against the war in Vietnam occurred in the North, it spread this knowledge from Southern jails to Northern jails. The resulting shock of discovery contributed to the examination of all prisons now current in the country.

The expansion of drug use into middle-class America also sent more affluent citizens behind bars. An estimated 12 million persons use marijuana and in some places the penalties are severe. Even when there is no prison sentence, the intensive law-enforcement searching for marijuana, especially routine stop-and-frisk routines of police, have helped make a large proportion of American youth anti-police and anti-criminal justice. It contributed to the conclusion of much of the middle class that jails and prisons were not just places for others.

Added to this are draft cases—even- sion of Selective Service—or conscientious objection—which has sent 2,600 young men into prison in the last five years, most of them affluent and from college-background families earnest about social causes.

When confronted with political prison conditions, cruelty and sardonic hazing, they are not so likely as a ghetto veteran to accept it as the inevitable harshness of a harsh world. The middle-class prisoner often is skilled in the arts of communication, has affluent parents and has access to influential lawyers and friends. Consequently, prison brutality and unfairness has been recorded and transmitted to the outside world as never before.

Some of the middle-class prisoners are committed to varying degrees of social reform or revolution, and have been willing while still incarcerated to dramatize prison conditions with strikes, fasts and passive resistance. Peace inside a prison is fragile, relations between staff and inmates always tenuous, and disturbances in any prison creates shock waves in all others. So even prisoner protests for short of riots have caused correction administrators to examine their operations.

Wardens generally dismiss the influence of the protesting inmate. "They have very little influence with the regular inmates," Nonh Alldredge, warden of Lewisburg Federal Penitentiary, said recently. But in Allenwood, an associated minimum security colony of Lewisburg, when one prisoner serving time for burning draft records in Cantonville, Md., was being transferred to maximum security, about 115 inmates, half the population of the camp, stood in silent protest in the yard. "That was an exception," Warden Alldredge said. At Alderson, W. Va., Federal Reformatory for Women, Warden Virginia McLaughlin similarly dismissed the impact of "political prisoners". She said, "The other women pay no attention to them." But after Attica, such prisoners led a sympathy strike of about 130 minutes, with enough large-scale involvement to require importing of guards from other prisons.

On the other hand, the political fervor of prisoners can be exaggerated. Frank Callahan, 21, a former broadcast journalist, served a year in Lewisburg for destroying draft records in Rochester, N.Y. He described his imprisonment with inmates in for conventional crimes:

"You know, we would start talking about the war and it seemed so artificial and distant from the situation at hand. . . . After awhile I just stopped dealing with that. It was a thousand years away to talk about Vietnam. If a guy was a bank robber, he'd tell us about the jobs he had done, or we'd talk about the movies we'd seen. You know, just fairly average conversations. When things got political, they were political in the sense that here we are getting screwed. . . ."

Groups tended to stick to their own but, Callahan says, they banded together if inmate interests within the prison conflicted with policies of the prison administration, on pragmatic treatment rather than ideological commitment.

In dozens of prisons across the country, inmates have formed unions, councils and associations to obtain personal protection against violation of "rights." It has raised the question of what rights a prisoner has, if any.

The answer is murky. American law for convicts has evolved mainly from feudal England and some of it is applied today in apparent contradiction to reason, logic and the U.S. Constitution.

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Civil death, for example, was spoiled in feudal society. Lower-class convicts were killed or mutilated. An upper-class person might escape death by permanent banishment to a distant place or by becoming a monk. In either case, he was no longer a part of the feudal community, he was declared "civilly dead" and his property was distributed to his heirs as though he were physically dead. Since he could never return, "civil death" was total.

To this day, American convicts suffer some of the same feudal punishments: Thirteen states have "civil death" statutes.

In 17 states "civil death" is imposed if a man gets a life sentence. His property is redistributed, his marriage is dissolved and his children become subject for adoption, even though most life sentences end in parole.

A "civilly dead" prisoner is nevertheless still obligated to support his wife and children.

In most states, imprisonment is automatic grounds for divorce, though most prisoners are in for less than two years.

The best-known loss of rights is the right to vote. This loss probably had its origins in the Greek statute for persons convicted of "infamy." In three-quarters of the states, felons lose the right to vote by statute and in most of the remainder by administrative policy of local boards of election. It is defended as protecting the honesty of the ballot box from disreputable persons and as denying influence over laws and lawmakers to those who have set themselves against the law. It is criticized as adding no protection to the society and inhibiting the integration of the ex-prisoner into normal life.

Prisoners lose other rights and opportunities by law, varying from state to state. Some private and much public employment is denied them. Prisoners cannot sue others but others can sue them.

Three states (North Dakota, Virginia, Washington) prohibit marriages of offenders with three felony convictions to a woman under the age of 45 (presumably to prevent birth of children with the felon's "corrupted blood"). Seven states authorize sterilization of "habitual criminals." In at least three states, the law provides for complete or partial forfeiture of a convict's property.

All of these originate with another feudal English concept, that of "corruption of blood." Article III, Section 3 of the United States Constitution specifically forbids forfeiture and corruption of blood except during the lifetime of a person convicted of treason.

Most "prisoner's rights" moves are directed to his treatment inside prison. The assumption is that there are some punishments so cruel as to be prohibited in any case—like driving a man insane—and that others are so severe that they constitute a serious punishment that ought to be imposed only with due process to prevent its being done unjustly and without independent review.

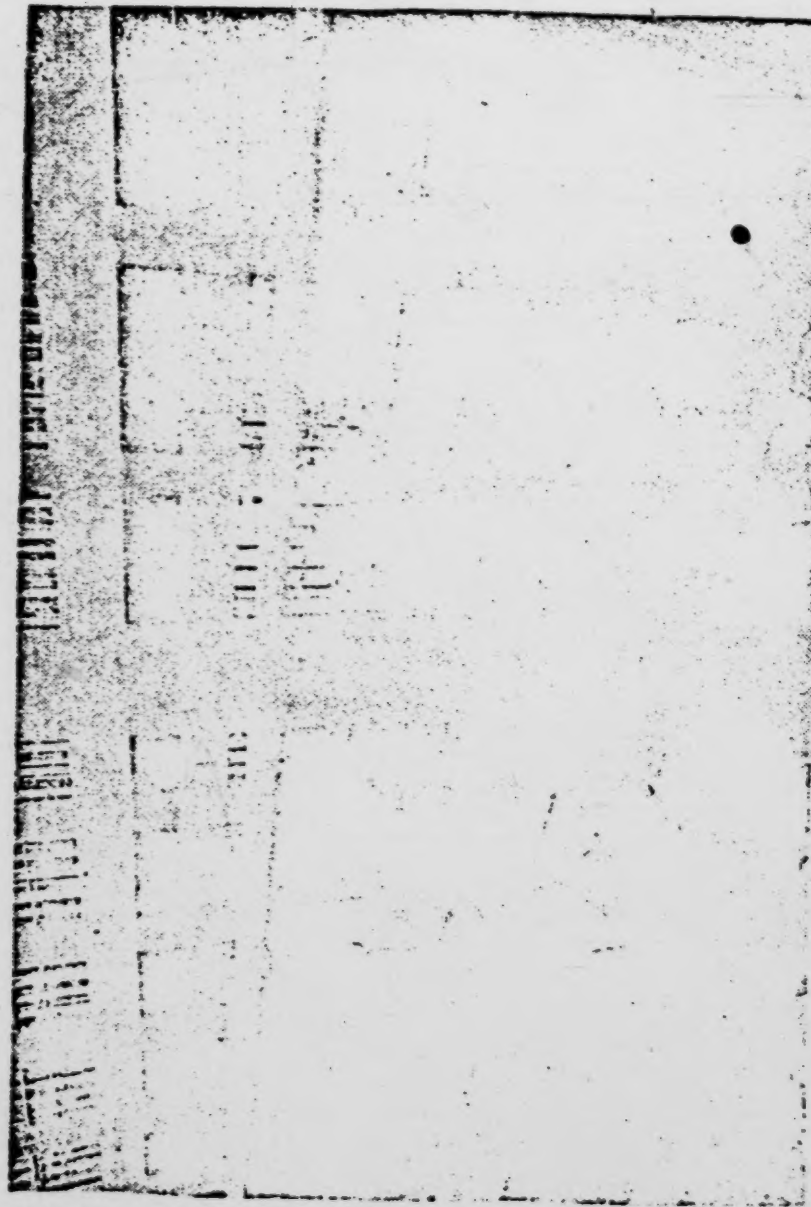
The movement toward prisoner's rights represents hope on the part of inmates, since these rights focus on the need for a prisoner to accept relations with society. But they also represent explosive tensions. All institutions in society are being re-examined for their goals and the ineffectiveness in attaining those goals. Failures are no longer as quietly accepted as in the past. The prisoner who universally hears he is being "rehabilitated" no longer passively accepts cruel and capricious treatment. Ninety-seven percent of prison inmates return to society, and each prisoner emerges, gauging his future relations with society.

A very unpolitical young man, emerging from five years in a state prison, said:

"All the time I was in, I remembered what they called out at my trial: 'The People versus . . . ' and then my name: 'The people against me. I'm not sure whether they're still against me.'"

Next: Alternatives to prison?

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New York's Tombs and the new type of prisoner: Through the courts and protest, inmates assert their rights.  
By Ellsworth Davis—The Washington Post

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For the last four months, Sen H. Duggles has studied prisons and jails in America and Leon Bosch has exhibited the corrected system of the District of Columbia. Today, Duggles concludes with a personal assessment of possible remedies.

## An Agenda for Reform Of a Hell Behind Walls

By Ben H. Duggles

Washington Post Staff Writer

When you turned down Fourth Street you saw all the usual clues: the 14-foot cyclone fence with escapeproof top, the slanting window frames looking inward but precisely too small for the purpose of the human head, the high intensely lit area around the perimeter.

But something was wrong. The gate was wide open and nobody was guarding it.

Inside it was eerie. Everything was in place. The plastic chairs were set around tables in the dining hall. The electric clocks were working but they were on daylight saving time, in the winter. In the Catholic chapel, the Virgin Mary was still wrapped in cellophane and on the Protestant side there were candles on the candleabra. Nobody was there.

The "new," five-year-old prison had never been used. The DeWitt Nelson Training Center eight miles from Stockton, Calif., was finished in 1967 for \$5,222,000, completely furnished for \$3,000,000 and in 1968 was on the verge of accepting the first of 400 juvenile inmates when suddenly everything

South Carolina's maximum security center: It may be the worst in America.

A lot else stopped, too. Through the fence you can see 800 acres of farmland, remarkable to the naked eye only for the magnificent oaks that stand against the sky. Unseen, below the surface, is a complex of water mains, sewers, gas lines and steam pipes already in place for connection to nine more prisons just like DeWitt.

never built.

California made a shocking decision. Like the rest of the country its crime rate was rising—fast, in fact, than the national rate. Like the rest of the country, it was sentencing more people to prison, only for longer terms, up 50 per cent in ten years. It decided to try something else: keep more criminals free in their own communities with special help.

In the last five years, the equivalent of 15,000 California criminals who ordinarily would have spent time in prison walked freely in their home towns. Instead of spending \$6,500 a year to maintain each prisoner in an institution, the state spent \$4,000 to help him keep out of trouble at home. The state

See PRISONS, A16, Col. 1

# Imprisonment: Loss of Liberty or Mental Torture?

## PRISONS, From A1

saved \$195 million in new prison construction and its crime rate went up at no more than other U.-bar states. The policy was promulgated by a governor, Ronald Reagan, not known for penitentiaries toward crime.

The men who run prisons seem to agree that most of their inmates shouldn't be there. In visiting prisons, I asked every warden, deputy warden and director of corrections what percentage of his prisoners he felt needed to be locked behind walls. The highest estimate was 33 per cent, the lowest 5; most were between 10 and 20 per cent.

## Deterrence or Deterioration

Most also believed that American sentences are too long, that after a time deterrence is replaced by deterioration.

American society already turns loose most of its convicted criminals. About two-thirds of people found guilty of crime are out on probation or parole. Probationers repeat crime at an apparent rate of about 27 per cent, compared to 45 to 70 per cent for people who spend time in prison.

This does not mean that no one ought to be retrained. Criminals dangerous to society will be imprisoned and have been in the most idyllic societies. But the country has to decide what it wants to happen inside the walls. Is the act of imprisonment itself the punishment? Or is punishment what happens after the criminal arrives inside the walls?

The way most jails and prisons are run, the walls are used to provide security while varying degrees of deliberate damage are done to inmates.

Men are put in a harsh environment and subjected to uncertain anguish, psychologically and physically. They are further punished by placement in "the hole," a standard part of every prison in which the prisoner is isolated without normal social contacts or tastes and is denied reading material or anything to occupy his mind and senses in a normal way. Psychologists say it can induce insanity.

Most prisons normally keep the prisoner as cut off as possible from his family and normal contacts. It is typical that outgoing mail is limited in quantity—sometimes ten letters a month—and is censored. It can be written only to persons approved by the prison. Incoming letters are limited to persons approved by the prison and these, too, are censored. Visiting is limited, typically to four hours a month. Often contact with visitors is limited to speaking by microphone through a wire mesh. Food is sparse and bad; treatment by guards frequently brutal and insulting. Overcrowded inmates prey on each other and the most ruthless establish the standard of conduct. Day after day is spent either in idleness or in dreary work at pennies an hour.

## Pattern Itself Repels

In riot after riot, the same pattern emerges: months or years of warden's requests, without results, for improved conditions in food, program, crowding and character of guards; followed by powerful petitions of prisoners, with no result; followed by a riot; followed by punishments, followed by minuscule results.

When he was in Sweden, David A. Ward, chairman of the department of Criminal Justice Studies at the University of Minnesota, took the list of 23 demands made by prisoners in Attica with him to meetings of the inmate councils and to Swedish prison authorities.

"I really felt ashamed," he says. "The prisoners and their keepers were astonished. There was only one Attica demand—full pay for work—that was not established practice there. They kept asking me, 'You mean that in America you still have to negotiate for adequate food inside prisons?'"

The courts are sentencing more criminals and decisions have to be made for their disposition. If no new facilities are built and more inmates are put into present prisons, densities will go even higher and there will be more human wreckage and riots: the formula for a bomb is to build an escape-proof container and increase the pressure inside.

If present prisons are modernized, it will cost from \$15 billion to \$18 billion. New prisons will cost about \$25,000 per inmate capacity just for construction, and from \$3,000 to \$10,000 a year to maintain each prisoner. Society, already building at the expense of building schools, is not likely to spend such money.

It is not the noblest of reasons, but prison reform could come because it costs too much to do anything else.

## Re-examining "Victimless Crimes"

The first reform should be to keep out of prison persons whose problem is chiefly medical or psychiatric. A place with custom-built locks and steel bars and untrained staff is not the place to treat drug addiction, for example.

The law and social standards need to be re-examined for "victimless crimes," illegal acts by which the offender affects only himself—drugs, alcoholism, prostitution, gambling. While the country is overwhelmed with crimes against innocent persons, it spends billions of dollars and millions of man-hours pursuing people who only do things only to themselves.

Where there are victims to crime, society should compensate them. This would not reduce crime but would diminish its social cost.

It is irrational for a society concerned with crime not to compensate its innocent victims. Nothing can pay for a murder or rape (though the police and hospitals should stop treating the victims of rape as though they were the criminals), but at least medical and psychiatric costs could be compensated. Property crimes are clearly payable.

The money involved is not a large amount, except to the victims. The average burglary loss is 150, which averages \$6 per taxpayer a year; the average taxpayer already spends \$17.20 a year to prosecute and jail burglary cases. In California the loss to owners is \$7 million a year in car thefts, though the state

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For offenders who need to be locked up, prisons need to change.

• Prisons should be small, the smaller the better. Large populations require regimentation and impersonal management and cause perpetual crises in control. The federal government recommends adult prisons with no more than 400 inmates, though it supports construction of larger ones. Some think 400 is too large.

• Prisons should be in cities. Prisoner families are usually poor and cannot afford long trips by private transportation to remote locations where commercial lodging is required. Prison staffs need professionals, who are not found in rural areas and don't like to move there. Inmate programs for advanced education and practical occupational training require visits outside the wall, but outside the walls of rural prisons there are usually farms and villages.

• The deliberated internal isolation of prisoners should end. Mail should be unlimited and uncensored except for inspection for physical contraband. Visiting should be unlimited except for common-sense rules. Sexual deprivation should end wherever possible. Conjugal visits inside the prison are better than nothing but they are declining and force the prison to decide who may come to visit an inmate. Regular brief interviews for all nonviolent inmates would end sexual deprivation and most treated homosexual inmates, and they would have other important benefits. Where all these things have been tried there has been a net gain for everyone, prisoner and keeper.

that may have sent them to prison in the first place. They need contacts while in prison to keep in touch with families and employers, to provide reading material and crucial information. Maintenance of these contacts make the critical weeks after discharge less dangerous. Jobs need to be lined up, housing arranged, family ties reshaped. There are not enough professional workers to do this and if there were there is not enough money to pay them. Volunteers on a massive scale are needed, including ex-inmates. (In Sweden parole officers are all volunteers, many of them lawyers, doctors and teachers.) In New York City, some churches have adopted cell blocks of the city jail. In many prisons, the Junior Chamber of Commerce has opened chapters inside the walls. Prisoners desperately need volunteer lawyers.

• Within the walls, prisoners need basic rights that no prison administration can violate. Physical and psychological torture should end. Other punishments—removal of privileges, transfer to other cell blocks, cancellation of furloughs, transfer to another prison, serious downgrading of assigned work—should be done only with a hearing by committees that include elected inmate representatives.

• The perversion of indeterminate sentences and parole should end. Short, fixed sentences with time off for good behavior would be better than the unfair accolades imposed by uncertain sentence decided by anonymous administrators. A judge may sentence a man to 12 years but an unaccountable guard or parole examiner

can serve life for stealing \$100 because they despise their jailers. Parole should end, and with it parole boards. Or else parole board decisions should be based on open, reviewable procedures with precise reasons given for denials. Since parole boards control more of a prisoner's life than any judge, they should be as accountable as judges and as subject to review and appeal.

• The elaborate procedures of "treatment" have been ineffective and have dubious ethical grounds. The modern philosophy is that the criminal is "sick" and can be "cured" by rearranging his thinking and emotions. Genuine change of attitude comes voluntarily from within and there is nothing voluntary in imprisonment; prisoners do what they can to be paroled and avoid further punishment but it usually produces cynicism. "Treatment" has not reduced repeated crime. "Treated" prisoners repeat crime just as often as "untreated" ones. Self-examination or counseling can produce benefits to inmates. But they don't reduce crime by themselves and they create an elaborate game of fake conformity. One group that does avoid future crime more successfully are the "alienated," that is, those who do not do well in "treatment." What is needed more than anything else is practical, convincing job training and effective education.

• Artificial barriers for ex-convicts and paroles should be removed. Paroles must get permission to marry and change apartments; they cannot get driver's licenses without permission or associate with people of poor repute. "My God," one parole worker said,

"the parents of half of my clients have prison records—and they're not supposed to associate with them." Many paroles come from neighborhoods where it is difficult to avoid people with police records.

Job barriers for ex-convicts are destructive and governments themselves are most guilty. Large categories of federal, state and local jobs are denied anyone with a criminal record, yet federal, state and local governments urge private industry to "hire the ex-convict."

Most licensed jobs are denied ex-convicts. New York State trains barbers in its prisons; New York State will not license an ex-convict to be a barber. In Michigan an ex-convict cannot be an ambulance attendant; in Illinois if you've been in prison you can't sell horsemeat. Ex-convicts usually cannot get auto and life insurance at normal rates.

The parolee and ex-convict are placed back into society and asked to compete with everyone else but they enter competition under heavier restraints than those who have not been to prison.

One result is that parolees and ex-convicts generally end up with the least attractive jobs with little future, making it easier to return to crime.

• No prisoner should leave an institution directly to out-ride life without a period of relative freedom and preparation for coping with the real world. In South Carolina, all prisoners in their last 90 days are in an unlocked classroom facility where they are given courses in such practical problems as buying used cars, finding housing and filling out job applications.

There should be a multiplicity of halfway houses, small facilities inside cities where prisoners live in open conditions doing work or attending school in a free atmosphere, with help available if it is needed.

• The secrecy within prisons should end. Sophisticated men like to repeat that power corrupts and absolute power corrupts absolutely. There are few places in the world where anyone has absolute and complete power over another human being. Prison is one such place.

It is an awesome power, with the ability to produce physical pain, mental disorientation and protracted agony. Yet it is done almost entirely in secret, without accountability or inspection.

Part 2/6/72

3



Donahip almost inevitably leads to pressure and counter-pressure.

#### The Threat of Torture

Americans don't like to face it, but physical torture goes on in this country's prisons and there is little done about it. Court suits have produced some change, but there are occasional glimpses behind the wall. When the examination ends the tendency is to return to sadism and savagery.

A year ago, a federal judge ruled that Arkansas' state penitentiary, the scene of years of tortures, was "unconstitutional" and he ordered sadistic treatment stopped. Last November, the judge held a hearing to see what had happened. Still going on, according to inmates testifying under oath, was placing of naked prisoners into unheated punishment cells; beating of handcuffed prisoners; putting a prisoner naked in a bare, concrete cell for 28 days without bed, blanket, or toilet paper; placing of an inmate in his cell by drunken guards; placing an inmate on the hood of a pickup truck that went 60 miles an hour over the fields; stripping prisoners naked and forcing them to lean against a wall with their noses for six hours at a time.

Not all prisons match such torture but without supervision and openness, all have the potential of degenerating into it.

The answer is not rules and regulations or even court orders alone. Openness to inspection by the public and by the press is the best cure. Visiting committees of a mixture of citizens who can examine an institution without warning society by the rule of every prison and jail jurisdiction in the country.

At present, prisoners in most places are forbidden to make contacts with the press, or pre-arrange interviews. Prisoners are often told that they will be held responsible if they are threatened with a return to prison for anything appearing in the press about them or their prison.

#### The Old, Easy Answers

Prisons do not stop crime. They only punish it.

Unless the sources of crime are stopped, all the prisons imaginable will not protect the public from new and repeating criminals. The easy answers for the cause of crime have been available for years: too much "permissiveness," not enough church-going, not enough hard punishment.

"Permissiveness" usually means that people have the money to move around and do what they wish and this has been more true of the middle classes who usually don't go to jail than of the poor who do. Slum families tend to be more authoritarian -- hard rules with corporal punishment -- than middle-class families.

And in the last five years punishment have become more harsh and the crime rate increased faster than ever. Nor did hard punishment work in the past when unconnected with social change at the source. During the reign of the original Queen Elizabeth, vagrants were hanged in lots of 300 and 400 but vagrancy did not cease. Henry VIII hanged 72,000 persons but it did not bring civil peace.

#### The Threat to Society

The less easy answer to the causes of crime may lie in the slum neighborhoods that most prisoners come from and from the phenomenal growth in use of drugs by the young. The poor are generally families caught in a radical change from uneducated rural life to technological urban demands, in a society that puts a high value on aggressiveness, possession of material goods, guns and other violence.

It is an incredibly rich society that nevertheless tolerates endemic poverty and racial depression and does it within sight of wealth. The poor usually live in chaotic neighborhoods with ineffective schools and poor career choices. The connection between poverty and antisocial behavior is historically clear and is pertinent today.

The withdrawal into drugs should warn about the lack of purpose that suffuses a society surfeited with material goods.

#### No Simple Answer

There is no simple answer to crime.

Under the best of conditions there will be some individuals dangerous to others who will be restrained. The first requirement of their institutionalization is that it ought to be humane and that their aggression not worsened. The two are related. Today prisoners receive troubled men, women and juveniles and deliver them back to society more unsuited to normal life and more savage than before.

But personality traits are not unconnected to the world the individual grows in. David Hazen, chief judge of the United States Court of Appeals in the District of Columbia, has said:

"Instead of faring up to the true dimensions of the problem and admitting that violent crime is an inevitable byproduct of our society's social and economic structure, we prefer to blame the problem on a criminal class. . . . They may simply be re-puniting to an environment that has impoverished them, humiliated them and embittered them."

Thomas Callinan, head of the New York State association of probation and parole officers, has spent his life trying to rehabilitate criminals:

"You know where it all comes from -- the slum. They come from a sick environment. We pour money into the police and the courts and prisons but we don't put it into what causes it all in the first place--poverty and race."

Before they are tried they are guilty, he says it succeeds well but we lose the problem of drugs and other destructiveness is solved, catastrophe lies ahead:

"All the storekeepers will have iron gates, all the homes and apartments will have bars on windows and doors. Then the addicts will turn to acetelyne torches and machine guns. And we'll lose the city."

Prison does not change this. Men come out with the same problems that sent them in. They need individualized education up to standards that let them compete in a technical society. They need modern training in modern jobs with a future at good pay. They need to live in decent housing in civilized neighborhoods at moderate cost. They need effective community services, volunteer and professional, for the personal and family crises that periodically overtake most people.

But this is a dilemma. Why do more for lawbreakers than for the ordinary citizen who needs the same things? The answer may be to provide it first for the ordinary citizen who needs such services and it is possible that in the future there will be fewer lawbreakers.

So far, society has not stopped the rise in crime despite added billions of dollars for more police and more punishment. The failure threatens a free society. Citizens in their homes and on the streets are justifiably frightened by threats to themselves and their property. Yet violence, including the adoration of guns, continues. The barring of people in their homes and abandonment of public places goes on. It is an escalating war between the comfortable who want peace and the uncomfortable who don't.

If the only answer is to imprison the growing number of captives in this warfare, it could result in a society forced to be more concerned with physical security than with freedom, a nation of jailed and jailers where in the most prevented sense each person will be his brother's keeper.

Post 2/6/72  
4

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE WASHINGTON POST CO.

and

BEN H. BAGDIKIAN,

Plaintiffs

v.

RICHARD G. KLEINDIENST, Acting  
Attorney General of the United States

and

NORMAN A. CARLSON, Director,  
United States Bureau of Prisons,

Defendants.

Civil Action No.

District of Columbia) ss:

AFFIDAVIT

I, Ben H. Bagdikian, first being duly sworn, depose  
and state as follows:

1. I am a plaintiff herein and am presently employed  
as a reporter and an Assistant Managing Editor for The Washington  
Post, a newspaper published in Washington, D.C. with extensive  
circulation in the Washington Metropolitan Area, and to some  
extent throughout the United States. I have been a newspaper  
reporter for approximately 18 years. As a reporter I have covered  
combat during wartime, domestic riots, and foreign revolutions.
2. In my capacity as a reporter for The Washington  
Post, I have written a series of articles on prisons which were  
published in that newspaper, along with various other articles  
relating to prisons or prison life which have appeared in The  
Washington Post.

3. During the course of the last two weeks I have received numerous letters from inmates at the U.S. Penitentiary at Lewisburg, Pennsylvania and other federal penal institutions.

I have also received telephone calls from attorneys and other individuals who have visited prisoners at Lewisburg during the last two weeks. These letters and telephone calls have contained reports that work stoppages by prisoners have been in progress at these institutions since February 14 or 15, 1972; that prisoners have, in connection with these work stoppages, confronted prison officials with grievances about prison conditions and about the procedures of the United States Board of Parole; that prison officials are engaging in reprisals against prisoners and prisoner representatives who are attempting to submit grievances to the prison officials contrary to an agreement by prison officials not to engage in such reprisals; and that public statements by prison officials concerning these events have been inaccurate or untrue.

4. On the basis of these numerous letters and conversations, I concluded that newsworthy events are currently transpiring at Lewisburg, Danbury, and other federal institutions which are of serious public concern. However, because of the sketchiness of the information presently available to me and because of what may be conflicts between the reports I have received as to precisely what has been happening, I determined that I could not responsibly write a story purporting to describe these events in detail without going to the prisons personally and interviewing knowledgeable participants on both sides. Accordingly, on March 1, 1972 I placed a telephone call to the Federal Bureau of Prisons and orally requested from Defendant Carlson permission to interview inmates at Lewisburg and Danbury. Mr. Carlson

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692-6669

denied the request, stating that it was against the Bureau's regulations to permit reporters to interview inmates. I renewed my request in writing on March 2, 1972 and, Mr. Carlson in writing, again denied my request, stating that: "... the Bureau of Prisons' policy does not permit press interviews of inmates." (Exhibit D to the Complaint).

5. Since the time Mr. Carlson denied me permission to interview inmates I have continued to receive letters and other communications describing continuing disturbances within the prisons. For example, on March 8, 1972 I received a report that it was widely believed among the prisoners at Lewisburg that prison authorities were about to transfer the elected inmate representatives to numerous other institutions in distant parts of the country. On March 9, 1972 I received a letter from an inmate at Lewisburg who claims that he is on the inmate committee, urging me to "have someone investigate the situation at Lewisburg" "as soon as possible." (Letter attached as Exhibit B hereto).

I am aware that the Bureau of Prisons has conducted such punitive dispersals of inmates on numerous occasions in the past. The dispersal of prisoners in such a situation makes it virtually impossible as a practical matter for a reporter to obtain full and contemporaneous information about the events in which the dispersed prisoners have participated or to which they may have been the only witnesses.

6. As a journalist with a continuing interest in matters concerning the federal prisons, I follow closely the reporting on prisons by major newspapers. I believe that there has been no comprehensive reporting in the public press of the



recent disturbances at Lewisburg, Danbury, and other federal prisons. There have been scattered articles in the press containing fragmentary information about these events, but to my knowledge a full and coherent account of what has happened has not been presented to the public.

7. On the basis of my experience as a reporter and as an Assistant Managing Editor responsible for making judgments on which stories are to be published, I am convinced that the inability of reporters to obtain on-the-scene interviews of participants or witnesses to the present occurrences is largely if not exclusively responsible for the sparsity of news stories during the last two or three weeks about these newsworthy and perhaps historic events.

8. The letters I have received are a wholly inadequate foundation on which to base a responsible accounting of the recent events. Relatively few prisoners write with fluency; and some prisoners in fact have very little knowledge of the English language. It has been my experience that despite whatever assurances may be given by prison authorities, inmates almost always believe that their outgoing letters are read by prison officials, and such fears lead to self-censorship. Letters do not permit the kind of critical inquiries and questioning in depth which are part of a well-conducted face-to-face interview, and they do not enable me to observe the demeanor of the inmate in order to determine the accuracy of his statements. Moreover, it is virtually impossible for me to check the statements in a prisoner's letter with other persons at the institution having knowledge of the matters referred to. If I visit a prison and conduct interviews I can talk to a number of individuals,

inmates and others, and from confronting such a variety of sources I can determine whether specific allegations are corroborated or not and I can thereby reach more reliable conclusions -- something which I cannot accomplish on the basis of letters. Moreover, the information I receive in an interview is generally timely when I receive it, whereas letters always involve some delay.

9. I have on some occasions in the past applied to officials of the Bureau of Prisons for permission to interview inmates in federal penitentiaries, and have, in fact, conducted such interviews with the full knowledge and permission of these authorities. I have conducted such interviews at Lewisburg Penitentiary and at the Federal Reformatory for Women at Alderson, West Virginia.

10. It has been my experience on the occasions of these interviews that the prison authorities were able to take and did take precautions adequate to protect my safety and to prevent any untoward consequences resulting from my visit to the prisons. At Lewisburg, I was accompanied on my interviews by a non-custodial member of the prison staff. At Alderson, on one occasion I was allowed to walk freely through the prison, interviewing prisoners at random as I went. On another occasion at Alderson I interviewed twenty-six members of the Inmate Council without any official accompaniment whatever. On no occasion was my interview followed by any disturbances of any kind within the prisons.



11. On several occasions I have conducted interviews at state prisons with the full knowledge and permission of the state prison authorities. In some instances I was allowed to speak in private with male prisoners whom I selected at random. On no occasion was my personal safety threatened, and on no occasion did my interviewing lead to any disturbances within the prisons.

12. In conducting such interviews in connection with a recently published series of articles on prisons and prison conditions I was told by prisoners, and had confirmed by prison officials, stories about large scale non-violent demonstrations similar to those apparently presently in progress, which had occurred months or years ago. To the best of my knowledge these events were seldom reported in the public press or other news media; although it is my judgment as a reporter and as an Assistant Managing Editor that they were of such significance that they would have received coverage if prisoners had been able to notify reporters and if reporters had been free to visit prisons to conduct interviews.

13. In the course of interviews I have conducted at numerous federal and state penal institutions, I have been told by a great many correctional officials that an adequate mechanism by which prisoners can publicly air their grievances about prison conditions is essential to the avoidance of outbreaks of prison violence. On the basis of these statements, and my own observations of prisoners and prison life, I am convinced that free

access by prison inmates to reporters would if anything help  
avoid, rather than precipitate, outbreaks of widespread violence  
in prisons.

  
BEN H. BAGDIKIAN

Subscribed and sworn to before me this 10<sup>th</sup> day  
of March, 1972.

  
Notary Public

My Commission expires \_\_\_\_\_

My Commission Expires on 11, 1978

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& CALIFANO  
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656-0862

- 7 -

BEN H. BAGDIKIAN  
ASSISTANT MANAGING EDITOR  
(202) 873-7442

U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C. 20535

March 2, 1972

Mr. Norman Carlson, Director  
Federal Bureau of Prisons  
101 Indiana Avenue, N. W.  
Washington, D. C. 20537

Dear Mr. Carlson:

Let me renew in writing my request made to you verbally March 1 to interview prisoners in Lewisburg who are now or have been held in segregation as a result of a strike in that institution. As you know, information received by the press by other means, no matter how diligently pursued, was unsatisfactory and unclear.

I should also like to interview prisoners at Danbury who are being held in segregation, or Intensive Treatment Units, during the strike now in progress at that institution. Because of the dispute over punishment meted out to inmate negotiators in the Lewisburg case it is important to get direct access to prisoners in Danbury.

Sincerely,



BHB:b

Ben H. Bagdikian

Exhibit C

March 2, 1972

Mr. Ben H. Bagdikian  
Assistant Managing Editor  
The Washington Post  
1515 L Street, N. W.  
Washington, D. C. 20005

Dear Mr. Bagdikian:

Thanks for your letter.

As I discussed in our telephone conversation of March 1,  
the Bureau of Prisons' policy does not permit press interviews  
with inmates.

Attached is a copy of our recently issued Policy Statement  
regarding inmate correspondence with representatives of the  
press and news media.

Sincerely,



NORMAN A. CARLSON  
Director

Exhibit D

# Policy Statement

1220.1A

SUBJECT: INMATE CORRESPONDENCE WITH REPRESENTATIVES  
OF THE PRESS AND NEWS MEDIA

2-11-72

1. PURPOSE. This Policy Statement establishes the policy of the Bureau of Prisons, with respect to contacts with the press. The purpose is to protect First Amendment rights of inmates, within the constraints of sound institutional management.
2. POLICY. Recognizing the right of inmates to have access to the news media, inmates may correspond freely with representatives of the press. Representatives of the press are encouraged to visit Bureau of Prisons institutions, to learn about and report on correctional facilities, activities, and programs.
3. DIRECTIVE AFFECTED. Policy Statement 1220.1 is superseded by this Policy Statement.
4. PROCEDURE.

## a. Application

This Policy Statement applies to the news media, which is defined as the following:

A newspaper entitled to second class mailing privileges; a magazine or periodical of general distribution; a national or international news service; a radio or television network or station.

## b. Procedure

- (1) An inmate may write to a representative, specified by name or title, of the news media. Correspondence to a newspaper may be sent through the Prisoners Mail Box, which provides opportunity for unopened correspondence with officials such as congressmen, judges, and other government officers. It shall be forwarded directly, promptly, sealed, and without inspection.
- (2) A representative of the news media may initiate correspondence with a particular inmate. Incoming correspondence from the news media will be inspected solely for contraband, or for content which would incite conduct which is illegal. Reject correspondence will be returned to the sender, with an explanation. Questions to the inmate may be presented through this correspondence, and the inmate may respond through the Prisoners Mail Box.



- (3) The inmate shall not receive any compensation, nor anything of value, for material submitted through this means to the media.
- (4) A transmittal slip, similar to the enclosed sample, will be attached to the outgoing FMB letter, and the mail will be sent each working day, in an institution envelope, and at government expense. Facilities with substantial numbers of psychiatric patients may also attach a statement, indicating that there are inmates in the facility who are psychotic, who have been found to be incompetent or of unsound mind, or who have other psychiatric problems.
- (5) Representatives of the press are encouraged to visit Bureau institutions for the purpose of preparing reports about institutional facilities, programs and activities. Press representatives should make advance appointments for visits. During an institutional emergency, the Chief Executive Officer may suspend all such press visits. During the emergency, information concerning the situation will be provided regularly to the press.
- (6) Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities.
- (7) When media representatives visit institutions, photographs of programs and activities may be taken. Inmates have the right not to be photographed by the press. Visiting press representatives should be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged, but if taken, releases must be signed by the inmates.
- (8) Press representatives may visit schools or business establishments which employ offenders in community programs, if the permission of the school or employer is obtained in advance. The rules outlined in paragraphs (6) and (7) above apply equally in the community situation.

- (9) Announcements of unusual incidents shall be made to local news media as promptly as possible by the Chief Executive Officer or by a staff member designated by him. The institution will prepare a statement for release to the media, briefly stating the facts. The text of such messages shall be transmitted to the Bureau as part of the reports required on the incidents to which they relate. If it can reasonably be assumed that the wire services or the Washington press will make inquiry at the Central Office, the text should be communicated to the Central Office by telephone.
- (10) Announcements related to Bureau policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Central Office. Press inquiries on such subjects shall be referred to the Bureau Director.
- (11) Information about an inmate that is a matter of public record will be provided by the Chief Executive Officer or his representative to representatives of the news media upon request. Such information shall be limited to the inmate's name, age, offense for which convicted, court where sentenced, length of sentence, date of sentencing, date of arrival or transfer, general institutional assignment, parole eligibility date, and date of expiration of sentence. Other contents of inmate files are confidential. Requests for additional information about individual inmates shall be referred to the Central Office. The Chief Executive Officer of each institution, or his designated representative, shall be solely responsible for contacts with the press. Other staff members shall refer all press inquiries to the Chief Executive Officer.
- (12) Representatives of the media are encouraged to notify the Chief Executive Officer before publication or dissemination of information in inmate correspondence, whenever statements naming individual inmates or staff members are made in that correspondence. In such instance, the institution will give all possible assistance in providing background and a specific report on the statement provided by the inmate.

c. Exceptions

Requests for exceptions to the above regulations may be made to the Director of the Bureau. Any disputes as to meaning or application of the regulations will be resolved by the Director.

*Norman A. Carlson*

NORMAN A. CARLSON  
Director, Bureau of Prisons

(Sample Transmittal Slip)

UNITED STATES PENITENTIARY

Leavenworth, Kansas

Date

The attached letter was placed in our Prisoners Mail Box for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a problem over which this institution or the Bureau of Prisons has jurisdiction, you may wish to write to me or to the Director, Bureau of Prisons, Department of Justice, Washington, D. C. 20537.

You may write back to the inmate, and ask him questions. Your letter will be inspected for contraband, and for any content which would incite illegal conduct.

The Bureau of Prisons encourages the press to visit institutions, and learn about correctional programs and activities. If you wish to do this, please contact me.

Inmates may not receive compensation for material submitted to the media. If the person writing you names another inmate or a staff member in his correspondence, we request that you advise us of that fact before its publication. We will provide background information and specific comments whenever possible.

If the writencloses for forwarding correspondence addressed to another addressee, please return the enclosure to me, or to the Director.

Warden

Lucky A. Johnson-36791  
P.O. Box 1000  
Lewisburg, PA 17837

Dear Mr. Bagdikian:

You please have some  
one investigate the sit-  
uation - here. at Lewisburg  
the federal don't have  
the funds to get files  
of lawyers - (this)  
it will appear - hear  
about. please have  
it done at once as  
possible.

Thank you

Lucky A. Johnson  
36791

P.S. I'm off - the inmates  
who are on the inmate committee  
here.

Exhibit E

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE WASHINGTON POST CO. )

and )

BEN H. BAGDIKIAN, )

Plaintiffs )

v. )

RICHARD G. KLEINDIENST, Acting )  
Attorney General of the United States )

and )

NORMAN A. CARLSON, Director, )  
United States Bureau of Prisons, )

Defendants. )

Civil Action No. )

District of Columbia) ss:

SUPPLEMENTAL  
AFFIDAVIT

I, Ben H. Bagdikian, first being duly sworn, depose  
and state as follows:

1. I am a Plaintiff herein and have previously given an affidavit in this case. (See Exhibit B to Complaint).
2. It has come to my attention and I have reason to believe since 8:00 A.M., today, March 10, 1972, that the disturbances at Danbury Prison are continuing at the present time. Approximately 80% of the inmate population continue refusing to work. Some of the inmate representatives selected by the inmates at the direction of the warden have been placed in punitive segregation, contrary to promises made by prison officials and that they are being physically and psychologically harassed by the staff.



3. I am further advised and have reason to believe that the work stoppage at Lewisburg Penitentiary has ended, but that members of the inmate negotiation committee, elected by the inmates at the direction of the warden and promised freedom from reprisals are in fact in punitive segregation under unsanitary conditions and are fearful for their safety.

4. Reports have also reached me during the last several hours that some participants in the negotiations at Danbury Penitentiary have been transferred to Lewisburg and also placed in punitive segregation, contrary to promises of no reprisals.

5. It is my judgment as a professional journalist that the reports reaching me suggest that I would be able to obtain information of significant and immediate news interest to the public by conducting interviews with prisoners at Lewisburg Penitentiary and Danbury Penitentiary.

  
BEN H. BAGDIKIAN

Subscribed and sworn to before me this 10<sup>th</sup> day  
of March, 1972.

  
Notary Public

My Commission expires \_\_\_\_\_

My Commission Expires Jan. 31, 1978

## United States Senate

COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS  
(PURSUANT TO S.C. 1, 93, H.R. 11, 810 CONGRESSIONAL RECORD)

WASHINGTON, D.C. 20510

March 3, 1972

Mr. Norman A. Carlson  
Director  
Bureau of Prisons  
Indiana Avenue  
Washington, D. C.

Dear Mr. Carlson:

I am writing to inquire about reports that inmates of federal prisons in Danbury, Connecticut, and Lewisburg, Pennsylvania, reportedly protesting prison and parole policies, have been refused access to reporters.

In its recent Policy Statement 1220.1A, issued February 11, 1972, the Bureau of Prisons states, "Representatives of the press are encouraged to visit Bureau of Prisons institutions, to learn about and report on correctional facilities, activities, and programs." While under Procedure (b)(5), the Bureau does not permit press interviews with individual inmates, it does allow "conversation with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs, and activities." It would appear from this statement that the Bureau's policy provides for some direct communication between prisoners and reporters as long as the identity of the prisoner is withheld and the subjects discussed are limited to "institutional facilities, programs, and activities."

I have taken note, also, of Procedure (b)(5) which gives the Chief Executive Officer of an institution authority to suspend all press visits during an "institutional emergency." Presumably, based on press reports, there is or has been such an emergency at Danbury and Lewisburg. While I am not familiar with the circumstances which presently exist at the Danbury and Lewisburg institutions, I am concerned about what is reported to be a total prohibition upon any direct communication between the protesting prisoners and reporters. One newspaper account of the protests at these two institutions indicates that Bureau officials themselves profess ignorance of the reasons underlying the protests. Surely, if this be the case, communication between prisoners and reporters is especially critical to the resolution of whatever difficulties may exist.

I shall appreciate your bringing me up to date on the situation at these two institutions with respect to the reported prisoner protests, the Bureau's interpretation of its own policy in these cases respecting reporters' access to inmates, and the rationale behind the reported decision to disallow any direct communication between inmates and reporters.

On the basis of the Bureau's new Policy Statement concerning inmate access to representatives of the news media, I know that you share my concern for the First Amendment rights of inmates.

With kindest wishes,

Sincerely yours,

Sam J. Ervin, Jr.  
Chairman

SJE:lpe

# A Prison Strikes Mystify U.S. Officials

By Ben H. Bagdikian  
Washington Post Staff Writer

The longest and most complete prisoner strike in the memory of federal officials has been under way since Feb. 14, but officials here say they have no idea what has caused it.

All 1,236 prisoners in the Federal Penitentiary at Lewisburg, Pa., have refused to work for two weeks. They were provided no reprisals if they remained peaceful. However, all 16 inmates in the no-reprisal committee are now listed in punitive segregation and officials agree that there was no violence.

Other prisoner strikes in federal prisons during this same period have been or are in progress in Illinois and one strike was total. Combined, had the California Federal Penitentiary been had a total of all its prisoners for a week.

Federal officials in Washington, thrown into punishment cells for so long as to instance in what they claimed was violence, prisoners use or threatened use of the no-reprisals promise.

An official spokesman for Norman Carlson, Director of

the Federal Bureau of Prisons, said that the promise was in effect and that no reprisals had been taken.

Yesterday, the same official told by The Washington Post that it had information that reprisals had in fact, been taken, then conceded that all 16 inmate representatives had been thrown into punitive segregation, or "the hole."

Asked why he said that they had failed to produce specific demands by a deadline set by Lewisburg Warden Noah Allredge.

The spokesman said there had been no violence at any time. Asked if he felt this was a violation of the no-reprisal pledge, he replied that failure to meet the deadline warranted the punishment.

In Marion, Ill., the most secure of all federal prisons, a week-long strike of "most" of the 500 prisoners also began Feb. 14, the spokesman said.

Initially, the spokesman said that both Carlson and the Marion warden, George Pickert, were also mystified by the reason for the work stoppage. Pressed, he said it might be related to the fact that some

Marion prisoners testified in court case "of interest to the prison population at Marion" and when the inmate witnesses returned to the prison, they were thrown into punitive segregation. At that point, most of the Marion prisoners went on strike.

Asked whether the court case involved treatment within the prison, the official spokesman said he did not know. He said the punishment of the testifying prisoners was not related to what they told the court but because they created a disturbance on the bus returning them to prison from the courtroom.

In Danbury, Conn., about 60 per cent of the prisoners have conducted a peaceful work stoppage for the last two days. There are about 750 inmates in the Connecticut prison. Sunday, The Rev. Daniel Dierman, recently released from Danbury, said on the television program "Select the Facts" that there were publicly anticipated disturbances in a number of federal prisons. Officials said they are also mystified by the causes of the Danbury strike.

In Lompoc, Calif., all 939 prisoners have been locked in their cells for a week because, officials said, of tension between Mexican, American and black inmates.

In a letter to The Washington Post last week, a prisoner mentioned serious grievances with federal parole procedures and alleged public statements by parole officials.

The prisoner said that the striking inmates had committed themselves to nonviolence but that "in all probability it will not receive . . . news media coverage" because of that.

Asked if a reporter could interview the 16 inmate representatives now in isolation at Lewisburg, Carlson's spokesman refused, saying it was against federal regulations to permit personal contacts between prisoners and journalists.



## 2 Prisons Still Hit By Unrest

The Washington Post  
Thursday, March 2, 1972

Norman Carlson, director of the federal Bureau of Prisons, said yesterday that most inmates of the federal prison at Danbury, Conn., are still on strike and about 250 prisoners at the Lewisburg prison are still locked in their cells.

Otherwise, he said, previously disturbed federal prisons at Marion, Ill., and Lompoc, Calif., have returned to normal.

Carlson continued to express ignorance of why the strikes were staged and continued to refuse to let a reporter interview inmates selected by the prisoners to represent them who have since been placed in isolation.

Prisoner letters yesterday mentioned such grievances as parole procedures, the beginning inmate work wage of 10 cents an hour, poor working conditions in the prison factories, poor food, and harassment by guards.

### 50 Inmates Indicted In N.J. Prison Strike

TRENTON, N.J., March 1 (UPI)—Forty-one inmates have been indicted for kidnapping the warden and guards, assault and other offenses during an uprising at Rahway state prison last Nov. 24-25, state officials said today.

Four other inmates were indicted for taking two guards hostage during a disturbance at the Yardville youth reception and correction center last Dec. 15-16 and five prisoners were indicted for assaulting a Yardville guard Dec. 23.

State Attorney General George F. Kuzley Jr. said the grand jury that returned the 50 indictments Feb. 2 and Feb. 9 found no evidence to warrant charges against four Yardville guards who were charged by inmates with beating a prisoner in an incident that allegedly started the Dec. 15-16 disturbance.

Kuzley said there were no witnesses to corroborate the story of the inmate who claimed he was beaten.

### Prison Strike

DANBURY, Conn. — A work stoppage at the federal prison in Danbury swelled to 100 per cent effectiveness yesterday and prison personnel worked 12-hour shifts to cover jobs previously performed by inmates, prison officials said.

"With the absence of inmate help in the kitchen, it has been necessary to reduce the number of meals per day from three to two," said Warden John Norton.

The work stoppage began Monday at Danbury, which has about 700 inmates. Prison officials say they have been meeting with inmates to resolve certain issues, but they decline to say what those issues are.

The Washington Post  
Friday, March 3, 1972

EXHIBIT 3

[illegible]

conditions of the region.  
 • **Public Civil Service**  
 • **Water & Sewerage**  
 • **in the local commu-**

In his last session, which began Monday, the speaker delivered an address on "The American People," in which he said that the American people are the most important factor in the world.

[illegible]

had agreed to give the pay commission to the convention, but the chief justice vetoed Apple's authorization of it in the last temporary "session."

"What is a call to which I cannot respond," she inquired. "They would feel that they are lawyers are in need of spiritual leadership," he answered. "But I am not now called."

[illegible]

An expected debate between the two candidates, which is expected to take place in the coming weeks, has already taken form. The first telephone conference was held on Monday, and the second on Friday. Both are arranged for a 90-minute session of free-wheeling discussion, with a standard set of questions, and a panel of six moderators, and a host of observers. The first conference, scheduled for Monday, will be held at the University of Maryland, and the second, on Friday, at the University of California, Berkeley. The two candidates are expected to appear under their own names. Under law, however, they may not be able to do so, but they will not be asked to reveal their true names. The two candidates are expected to be the South and the North, with the South being the "minority candidate" and the North being the "majority candidate."

Cathleen Ann W. Donohue of Washington, a former assistant attorney general, sold the private group's purpose was "to help fill an apparent gap in federal government oversight."

The League Council was founded in 1921 by a group of labor leaders, and after a brief period of inactivity, was revived at the request of President Roosevelt to represent Negroes and other minorities in the rights work which the United League is doing today.

William C. Sullivan  
Deputy Director Washington Post  
Washington D.C.

Washington, D.C.  
Feb - 17 - 1972

I am advising this letter to you  
because I'm going to ask for help. I was  
at the Feb. 16-17-18 of the  
Council that 5 members of the committee  
to which I was appointed, by the Department  
of Justice at their luncheon presentation  
have been taken to being completely  
this committee was born by the fact that  
of the previous fact.

I will say enough that my duty  
is in "good danger".  
With this letter I'm happy you to  
please. I don't know the impact about  
my duty and the duty to the other  
members of the committee.

The information that they are giving is  
false.

Just like the official did at "action"  
this demonstration is planned via an  
action. No reference "ad" ad action.

These officials are the ones who are investigating us to commit a act of violence. As they can exit this as Plot.

Volstead has done much in other institutions, and has done nothing for the inmates. It has only since the passages of the Administration. One would like to see justice to the friend, who they want to hang. They have divided us, based on Request of week the above, is one of them.

The entire population is one of 1000 of us, except the inmates who work in the hospital.

Please, dear, what we have to tell you, please!

if by any chance, anything happens to me, I would appreciate if you let my family know of my medical condition.

Calvin M. S. S. S.

559 W. 100th St.

New York City

Thank you very much for your consideration.

Respectfully,  
Calvin M. S. S. S.



BUREAU OF PRISONS  
WASHINGTON, D. C.

1220.1

10-11-65

## POLICY STATEMENT

SUBJECT: REQUESTS FROM PUBLIC INFORMATION MEDIA

1. PURPOSE. This Policy Statement establishes responsibilities, policies and procedures to be followed by institutional personnel in dealing with inquiries by representatives of the press.
2. DEFINITION. The press includes newspapers, magazine and other periodicals, wire services, radio and television stations and networks, free-lance authors and photographers, and all others whose purpose is to convey information to a public audience.
3. RESPONSIBILITIES. The Warden, Superintendent or Director of each institution shall solely responsible for contacts with the press. In his absence, the Acting Warden, Superintendent or Director shall assume this responsibility. Other staff members shall refer all press inquiries to the Warden, Superintendent or Director.

#### 4. POLICIES.

- a. Information about an inmate that is a matter of public record will be provided by or at the direction of the Warden, Superintendent or Director to any person who makes proper inquiry during normal business hours. Such information shall be limited to the inmate's name, offense for which convicted, length of sentence, date of sentencing, date of arrival or transfer, parole eligibility date, and date of expiration of sentence.
- b. Contents of inmate files, except for the data enumerated in paragraph (a) above, are confidential. Legitimate requests for additional information about individual inmates shall be referred to the Central Office.

#### DISTRIBUTION:

All Institutions	- 4
Headquarters	- 2
14800	- 2
14414	- 2

*Appendix A*

- c. Representatives of the press should be encouraged to visit Bureau institutions for the purpose of preparing reports about institutional facilities, programs and activities. Press representatives should be advised to make advance appointments for visits, and institution staff members should be designated to serve as guides. Such staff members may respond to questions about facilities, programs and activities but shall refer all questions about policy and about individual inmates to the Warden, Superintendent or Director.
- d. Press representatives should not be permitted to interview inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not made known if it is limited to the discussion of institutional facilities, programs and activities.
- e. Inmates have the right not to be photographed by the press. Visiting press representatives should be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged, but if taken, releases must be signed by the inmates. In cases of escape, official photos will be made available to the press.
- f. Press representatives may visit business establishments which employ work releasees if the permission of the employer is obtained in advance. The rules outlined in paragraphs (d) and (c) above apply equally in the work release situation.
- g. Announcements of escapes, disturbances, accidents and fatal or severe assaults shall be made to local news media as promptly as possible by the Warden, Superintendent or Director or by a staff member designated by him. It is advisable to prepare a statement for release by telephone or messenger to all media, briefly stating the facts. The text of such messages shall be transmitted to the Bureau as part of the reports required on the incidents to which they relate. If it can reasonably be assumed that the wire services or the Washington press will make inquiry at the Central Office, the text should be communicated to the Central Office by telephone.
- h. Death of an inmate by natural causes is not normally newsworthy. However, upon the death of an inmate who has attained national notoriety, the procedure outlined in paragraph (g) above will be followed.
- i. All announcements related to Bureau policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Central Office. Press inquiries on such subjects shall be referred to the Bureau Director.

- 3
- J. Clippings from local media relating to institutional activities shall be collected and forwarded to the Director at the close of each calendar month.

*WILLIAM E. ALEXANDER*  
WILLIAM E. ALEXANDER

Director, Bureau of Prisons  
Commissioner, Federal Prison Industries, Inc.

## AFFIDAVIT

DISTRICT OF COLUMBIA ) ss:

I, Norman A. Carlson, being duly sworn, do hereby certify that I am the Director of the Federal Bureau of Prisons. As Director, I am responsible for the development and promulgation of the policies which govern the operation of the various institutions which comprise this Bureau.

On February 11, 1972, I promulgated to all federal institutions Policy Statement 1220.1A, entitled "Inmate Correspondence with Representatives of the Press and News Media." A copy of that policy statement is attached and made a part of this affidavit.

The revision has been undertaken in order to accommodate two prevailing considerations: communication of inmate grievances, complaints, and other matters to the press; and the right of the public to learn, through press coverage, about correctional activities. At the same time, I recognized my duty to conduct all correctional operations and programs in such a way that the security of the institutions and the safety and well-being of inmates and staff members are assured.

Before revising the old policy, I obtained comments from each of the Chief Executive Officers of federal institutions. I had a lengthy discussion with the wardens of the nine largest institutions. I discussed the subject area with state correctional administrators at a recent conference in Atlanta, Georgia and with officials in the Department of Justice having a particular interest in the field.

Based on these discussions, I was of the opinion that a new policy must be drafted which would grant to the inmate access to the press to express his grievances and would grant the public the opportunity, through press coverage, to examine correctional practices and programs.

From conversations with my staff and with the state administrators, including many from those listed by plaintiffs in the support of their complaint, I learned that, in many states, interviews were permitted at the



discretion of the local warden with virtually no direction or standards. I felt that these practices offered little guidance to us. One large state, which had adopted state-wide standards for press interviews, we learned had now returned to a policy of no interviews in view of difficulties arising from their previous policy.

It became apparent that the consideration we were trying to accomplish could be reached by another means, by sending all inmate correspondence sealed and unopened directly to the press and subjecting incoming correspondence to inspection only.

Under this new policy, outgoing correspondence procedures will be accomplished by authorizing inmates to use the Prisoners Mail Box system for this purpose. Under this system mail is sealed and deposited in special boxes. Envelopes deposited therein are collected daily, and forwarded unopened to the addressee. This is precisely the means which inmates have for sending sealed communications to the courts, Senators and Congressmen, and to various officials in the executive branch of government. The availability of this correspondence is made known to all inmates, and it is used extensively.

At the same time, we will permit press representatives to send mail to any inmate they choose. Matters initiated by inmates can be pursued in this manner and questions can be posed to the inmate, without limitation. Since we are primarily concerned about what comes into the institutions, this incoming correspondence will be inspected, but only for contraband (drugs, weapons, and money, for example) and for content which incites illegal activity (escape and riot, for example).

We encourage all media representatives to visit our institutions, to observe activities, and to report their findings.

These objectives and changes in policy have been incorporated in the attached Policy Statement. It permits inmates, without limitation as to frequency, volume and subject matter, to send all information, complaints, and grievances they wish to any media representative, as defined in the policy statement, whom they name. It permits incoming correspondence from the press, with the

minimum amount of restriction, as required for the security and safety of the institution. It encourages the press to inform the public about corrections, not just in abstractions, but by visiting institutions, talking with staff and inmates, and discussing programs, activities, and problems with them.

/s/ Norman A. Carlson  
NORMAN A. CARLSON  
Director, Federal Bureau of  
Prisons

Subscribed and sworn to before me this 21st day of  
March, 1972.

/s/ [Illegible]  
Notary Public  
My Commission Expires  
Aug. 14, 1972

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST CO., ET AL., PLAINTIFFS

v.

RICHARD G. KLEINDIENST, ET AL., DEFENDANTS

MEMORANDUM

The Washington Post, by this application for show cause order and immediate relief, seeks an order of this Court directing that its employees be permitted to interview inmates at federal penal institutions located in Lewisburg, Pennsylvania, and Danbury, Connecticut. Interviews are sought of a limited number of inmates willing to be interviewed and without attendance by prison officials.

Information has reached the *Post* from prisoners and other sources indicating that prisoners may have been subjected to excessive discipline and inappropriate restrictions incident to recent strikes or work stoppages at each of these institutions. The *Post* has been denied permission to interview by reason of a Policy Statement issued by the Bureau of Prisons on February 11, 1972, dealing with contacts with the press. The Policy permits prisoners to communicate with the press by unopened mail and also permits the press to communicate with prisoners by mail, subject only to inspection of incoming correspondence for contraband or contents, for example, which might incite escape or riot. While the *Post* has received some letters from prisoners, its representatives, based on experience in the field, feel that interviews are required to establish the validity or invalidity of information received and to explore various aspects of complaints by confidential interviews in some depth.

The Policy Statement provides as to interviews:

- (6) Press representatives will not be permitted to interview individual inmates. This rule shall apply

even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities.

An affidavit filed by the Director of the Bureau of Prisons states that this Policy was evolved with regard to the safety and wellbeing of inmates and staff members after discussion with wardens of nine large institutions, review of the problem at an administrative correctional conference in Atlanta, and examination of state practices.

The Court, after hearing the parties at length, will in its discretion refuse to grant any interim temporary relief. The issues raised by the complaint are set down for hearing on the prayer for preliminary injunction Thursday, March 23, 1972, at 9:30 a.m.

The mandatory nature of the order requested changes the status quo, alternative means of communication are available and have not been fully used, and the evidence in the affidavit of the Director of the Bureau of Prisons indicates that the Policy was worked out with thought and care. These considerations point to the need for a full record before the rights of the press in this difficult area can be resolved. At this stage the Court is unwilling to rule as a matter of law that the First Amendment requires that members of the press be permitted to interview prisoners confined in institutions not available to members of the public. While it is clear that the prisoners and of course the press have First Amendment rights, the issue is tendered as to whether the regulations of the Bureau of Prisons are overly broad or are the least restrictive alternative consonant with the affirmative requirements of the First Amendment. A determination of this issue requires proof and a better understanding of the nature and extent of both the constraints that may properly be required in the interests of sound institutional management and the right of the public through the press to be adequately informed concerning the operations of the prison system.

/s/ [Illegible]

March 13, 1972.

United States District Judge



Watson/ska

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST Co. and  
BEN H. BAGDIKIAN, PLAINTIFFS

v.

RICHARD G. KLEINDIENST, Acting Attorney General  
of the United States and  
NORMAN A. CARLSON, Director  
United States Bureau of Prisons, DEFENDANTS

Washington, D. C.  
March 23, 1972

The above-entitled cause came on for hearing on Plaintiffs' Motion for Preliminary Injunction before the HONORABLE GERHARD A. GESELL, United States District Judge, at 9:40 a.m.

APPEARANCES:

JOSEPH A. CALIFANO, JR., Esq.  
CHARLES WILSON, Esq.,  
RICHARD COOPER, Esq.,  
Of: WILLIAMS, CONNOLLY & CALIFANO,  
Counsel for plaintiffs

JOSEPH M. HANNON,  
MICHAEL A. KATZ,  
Assistant United States Attorneys,  
EUGENE N. BARKIN, Esq.,  
JULIA S. WILLSON, Esq.,  
Department of Justice,  
Counsel for Defendants

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## PROCEEDINGS

[3]

**THE DEPUTY CLERK:** Civil Action No. 467-72, The Washington Post Company, et al., v. Richard G. Klein-dienst, et al. Mr. Joseph A. Califano, Mr. Richard Cooper, Mr. Charles Wilson, for the Plaintiffs. Mr. Joseph M. Hannon, Mr. Michael A. Katz, Mr. Eugene N. Barkin, Miss Julia S. Willson, for the Defendants.

**THE COURT:** Mr. Califano, do you have any testimony you wish to offer on this motion?

**MR. CALIFANO:** Yes, we do, Your Honor.

**THE COURT:** Then I believe we should proceed to take it.

**MR. CALIFANO:** All right, Your Honor. Mr. Bagdikian.

**MR. HANNON:** May I be heard for a moment, please, Your Honor?

**THE COURT:** Oh, certainly, Mr. Hannon.

**MR. HANNON:** If Your Honor please, we filed an opposition to the motion for preliminary injunction.

**THE COURT:** Yes.

**MR. HANNON:** And we have, without equivocation, taken a position that there is no involvement of the exercise of First Amendment rights in this litigation.

**THE COURT:** I have read your papers.

**MR. HANNON:** On the basis of that, together, if Your Honor please, with the policy statement that is a matter of [4] record in this Court, we think as of now we are entitled to have the motion for a preliminary injunction denied without testimony and we so move the Court.

**THE COURT:** Well, I think I should make a record.

**MR. HANNON:** I take it Your Honor has denied the motion?

**THE COURT:** Yes, if you want me to formally deny the motion. I think in my discretion I should hear some evidence with respect to it. Plaintiffs have some rights here.

**MR. HANNON:** I understand that. You can take it under advisement and take the testimony. That is an alternative. I just want it on the record we have moved

for it and Your Honor can rule now or later. I think Your Honor has that discretion.

THE COURT: I think I should have a record. I was avoiding ruling on the motion. You seemed to want me to rule. If you want me to rule, I will deny it.

MR. HANNON: I would prefer you defer it.

THE COURT: I note your objection on the record and I will take the testimony. I leave it open.

MR. HANNON: Thank you very much.

MR. CALIFANO: Your Honor, we have three witnesses.

THE COURT: Very well.

MR. CALIFANO: Mr. Bagdikian, from the Post, and two other witnesses we can put on now or in rebuttal.

THE COURT: That is up to you. It is your case.

[5] MR. CALIFANO: Mr. Bagdikian.

I would, Your Honor, like to, if I may, deal with one point that is in the papers of Defendants, which is that the relief we are asking for now is the ultimate relief we are asking for, and make it clear that we do not believe that to be so. What we are asking for now, as indicated in our order, is very narrow relief. It is that Mr. Bagdikian and/or another reporter from the Post be admitted to two prisons, Danbury and Lewisburg, for a limited period of time to cover these stories, the stories relating to these two strikes that have taken place there, their causes, and the actions resulting from them, and to interview a limited number of prisoners, namely, those who were on the negotiating committees and perhaps a few others at those prisons, in order to handle this story. The ultimate relief we are asking for is to strike down the regulation as it now stands to open access to all prisons, all Federal prisons for the Washington Post, and to provide an order for new regulations to be issued by the Bureau of Prisons which would permit a more reasonable policy of press access.

Mr. Bagdikian.



WHEREUPON—

BEN H. BAGDIKIAN

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

[6] DIRECT EXAMINATION

BY MR. CALIFANO:

Q Would you state your name and address, please.

A Ben H. Bagdikian, B-A-G-D-I-K-I-A-N.

Q And your address, please?

A 4410 Albermarle Street, Northwest, Washington, D. C.

Q Mr. Bagdikian, where are you employed?

A At the Washington Post.

Q Would you describe briefly your present position and your professional career?

A I am an assistant managing editor of the Post and my duties there consist of being an ombudsman, which means listening to major complaints about the paper, commenting on the performance of the paper and other media publicly, and then from time to time reporting certain stories in depth.

I first became a newspaperman when I graduated from college in 1941. I worked for one year for the Springfield Morning Union at Springfield, Massachusetts. After service in World War II, I was for a short period a magazine editor in New York City. From 1947 until 1962, I worked for the Providence Journal and the Evening Bulletin in Rhode Island, as a reporter, special writer, columnist, foreign correspondent and chief Washington correspondent. From time to time I have had foundation grants for study of the press. The Ogden Reed Foundation and a John Simon Guggenheim Foundation fellowship. I was for [7] a while a contract writer with the Saturday Evening Post and have contributed to other magazines. For two years I was a director of the project of the Rand Corporation on the future of the

news media, which resulted in a book which was published two years ago.

Since January 1970, I have been employed by the Washington Post as its national editor, then as assistant managing editor for national news, and now as an assistant managing editor.

Q Mr. Bagdikian, have you had experience in covering prisons?

A Yes, I have.

Q Would you describe that experience?

A While a newspaperman in Rhode Island over a period of two years, I covered stories which necessitated going to the Rhode Island State Prison, interviewing prisoners, and prison officials, for various stories ranging from narcotics in prisons and individual cases of prisoners. For four months from September to January in this past year, I worked on a special series of articles on the American prison system for the Washington Post.

Q Did you visit state, local and Federal prisons?

A I did.

Q Would you describe briefly for the Court your experience in terms of access to inmates at the state and local [8] prisons you visited?

A There was a great variety of policy among prisons on access to prisoners and even to the prisons by newspapermen. In general I got the impression that the more difficult and poorer the reputation a prison had, the less accessible it was to outside examination. But in some places, there was freedom to interview prisoners in private and even use their names if they consented. In other places, there was not.

I interviewed prisoners in California privately, with the permission of the authorities. I interviewed them in South Carolina and in the jails of New York City.

Q Would you describe briefly your experiences in Pennsylvania?

A Which experience in Pennsylvania?

Q Your access experience in terms of prisons there.

THE COURT: Are you talking about the state prisons?

BY MR. CALIFANO:

Q The state prisons.

A The state prisons. I toured a state prison, the Graterford State Prison, and then for one week I was incarcerated in the Huntingdon State Penitentiary in Pennsylvania as a prisoner, unknown to the warden or the other inmates, where, of course, I had access to prisoners and spoke freely and privately with them.

Q Did you visit Federal prisons in connection with the [9] series of Post stories?

A I did.

Q Which Federal prisons?

A Lewisburg Federal Penitentiary and the Reformatory for Women at Alderson, West Virginia.

Q Would you describe your access experiences at that time?

A In both places I was cordially welcomed in the institution and offered tours of them and lengthy talks with the wardens in both cases to discuss their philosophy and experience in prisons. At Lewisburg, a photographer and I were conducted about parts of the prison. We could speak casually to prisoners whom we came across in the presence of the staff. At Alderson, we were afforded the same privileges except that we were permitted to go into one of the women's dormitories unaccompanied, and speak to women prisoners in private without the presence of a staff member, use their names if they consented. Then in addition to that, at Alderson they have a permanent inmates council, where each of the 17 housing units elects two members, and I asked that as many of those members as possible be gathered; and they were; and out of about 34 members, something like 26 were there. The warden and other staff members left the room, and we spoke in private about every subject that we wanted to.

THE COURT: Now, Mr. Bagdikian, was that before the [10] promulgation of the regulation that is before me? That regulation is dated February 12, 1972, is it?

MR. CALIFANO: February 11, Your Honor.

THE COURT: February 11, 1972. Was it before February 11?

**THE WITNESS:** Yes, it was, Your Honor.

**BY MR. CALIFANO:**

**Q** You say, "we," Mr. Bagdikian. Did you have someone with you?

**A** Yes, there was a photographer from the Post?

**Q** What was his access experience?

**A** It was a woman photographer and she had the same access as I. We were told not to take pictures of prisoners with their faces showing unless the prisoner gave consent, in which case a waiver would be signed. We were not interested in photographing prisoners in a personally identifiable way. We were permitted to take photographs, for example, in the visiting room in Lewisburg, and we were told that visitors there, prisoners and their visitors had to be told that there would be a newspaper photographer, that they did not have to be photographed if they didn't want to. If they did wish, they could turn their faces.

When we went through some of the prison factories, many of the prisoners wanted their pictures taken and we had to persuade them to turn their faces so they would not show.

[11] **Q** Mr. Bagdikian, have you recently become interested in any particular Federal prisons?

**A** Yes, I have.

**Q** Which prisons and why and when did you become interested in them?

**A** I became interested in Lewisburg Penitentiary and the Danbury Correctional Facility because of reports of a complete work stoppage at Lewisburg and an almost complete work stoppage at Danbury.

I learned of these things in a variety of ways. The events that followed, approximately February 14, 15, of this year, I heard from sources I had developed while working on this prison story, ex-prisoners, from sources on Capitol Hill, from lawyers of inmates, and others.

**MR. HANNON:** Your Honor, I don't object within certain limits but I do object to this now. He is telling us nothing but hearsay, what he heard from sources on Capitol Hill. I understand there is no jury present.

**THE COURT:** I think that is all in the papers anyhow. I will sustain your objection.

**THE WITNESS:** I finally heard in the form—

**MR. HANNON:** I objected, Your Honor. I understood you sustained it.

**THE COURT:** The question is, you became interested in the work stoppages, and you have answered that.

[12] Next question.

**BY MR. CALIFANO:**

**Q** What did you do when you became interested, Mr. Bagdikian?

**A** Eventually I called the Federal Bureau of Prisons and asked them about the work stoppage. What was at issue at the time, one of the major issues at the time was the fate of the elected inmates who were to represent the prisoners on grievances which were apparently the cause of the work stoppage. I called them only after I had received a number of letters from prisoners telling me about this, complaining about treatment, and from their lawyers.

**Q** Did you call them to ask to go to visit the prison at that time or just simply to get their comments?

**A** Originally, to get their comments and information.

**Q** At some point, did you ask to visit the prisons?

**A** I did.

**Q** When?

**A** I asked—

**Q** How and to whom did you place your requests?

**A** On March 1, I called the Bureau and asked to visit the prisons. I spoke to George Farkas, who was in charge of the public relations for the prisons. I asked to visit Danbury and Lewisburg for the purpose of interviewing the members, the elected members of the inmate negotiating committee, and a [13] certain number of other inmates about whom some allegations had been made.

**Q** What was their response?

**A** That the regulations did not permit that.

**Q** What did you do then?

**A** I wrote a letter to Norman Carlson, the Director of the Bureau, asking the same thing.



MR. CALIFANO: Would you mark this for identification?

THE COURT: I take it that is in the record. It is attached to the papers, is it not?

MR. CALIFANO: I am not sure it is attached to our memorandum.

THE COURT: It is attached to your memorandum, the letter and the refusal.

MR. CALIFANO: Then it is not necessary. Let me just give it to the witness so he can at least have it in front of him.

THE WITNESS: Yes, this is the letter I received from Mr. Carlson.

BY MR. CALIFANO:

Q What was the letter you got back from Mr. Carlson?

A Said that the policy of the prison system did not permit what I had asked.

Q What was your next step, Mr. Bagdikian?

A I consulted with my superiors, Mr. Howard Simons, [14] the managing editor of the paper, and Benjamin Bradlee, the executive editor; and we decided that this was a story of some importance, that it was important in the proper telling of the story to speak to these prisoners, and that we should take steps to try to do so.

Q Mr. Bagdikian, you were here at the hearing in this case about ten days ago. What did you do after that hearing?

A After that hearing, I called Mr. Carlson at the Bureau of Prisons and asked for permission to go to Lewisburg and Danbury in order to interview the members, the elected members of the inmate negotiating committee and a certain number of other prisoners about whom some allegations had been made.

Q What did Mr. Carlson say?

A He said I would be welcome at both prisons, that I would be welcomed there to take tours of the prisons and he urged me to take tours of the prisons and to walk around and inspect the prisons.

I told him that was not the purpose of the visit but that I would like to go there anyway; and he said that I would be welcome there and he would notify the wardens that I would be there.

Q Did you ask Mr. Carlson whether you could speak to these prisoners?

A Yes, I did.

Q What did he say?

[15] A He said that was against prison regulations.

Q Did you visit Lewisburg and Danbury?

A I did.

Q Would you describe briefly what happened at Lewisburg for the Court?

A I spoke to the warden and told him my wish, which was to interview these prisoners; and he repeated that this was forbidden by Bureau policy.

Q Did you identify the prisoners you wanted to interview?

A I told him I wanted to speak to the members of the inmate negotiating committee and certain other ones about whom there had been allegations of mistreatment.

Q And what did the warden say?

A He said that would not be permitted under the regulations.

Q Did you visit any prisoners at Lewisburg?

A I did.

Q Would you describe the circumstances?

A Warden Alldredge, at Lewisburg, said that he would go so far as to permit me to select out of the prison population of 1300, or so, 15 prisoner cards at random, names unseen, assuring me that those card files included the total population, including the inmate negotiating committee and including men in segregation; and that any prisoner whose card I pulled would [16] be available in a group interview in private.

I did do that.

Q Would you describe that group interview briefly?

A Because of various transfers and men being in the hospital, and so forth, we ended up with ten men in a room in the education department of the prison, without a staff member present. The ten men, the ten inmates

were there. I was not to use their names but I had their names and numbers in order to confirm that these were in fact the men whose cards I had pulled out, as they seemed to be.

Some of them were quite nervous on being there and immediately wanted to know why they were there, who I was, and what was this all about. I explained to them. Some of them asked if they were required to stay there; and I said they were not, and that no one should stay there if he didn't want to; that this was completely voluntary. A few left.

Before they left, there were ten in all, when we started. I mentioned that I was interested in finding out about the strike and what had happened to the strike committee members and certain others. I said I had received letters from prisoners; and there was a look of puzzlement among some of those prisoners in that room. I said: You know you can write letters to the press that are uncensored now?

And four of them said they did not know that. The remaining six said they did know that but they didn't really [17] believe that the letters were uncensored.

I asked them also how they felt about being interviewed in a group rather than individually in private. One of the prisoners said: Let me explain about this. He said: Every man in this prison wants to get out of here and he wants to get out of here in any way he can almost; and one way a man thinks he can get out is by giving information to people who run the prison and to the authorities. He said: Look at this boy Douglas down in Harrisburg, who has money, who has freedom, he has everything because that is exactly what he did. We may be sitting here and I will tell you something, and one of these other men may then go and tell the prison authorities what I said; or these may be all good guys and they will tell their cell mate or tell someone else, and he will say what I said or he will distort what I said or he will lie; and they may be looking for a witness against me in a trial or something to be said to a parole board. So that any time you say anything in a group of inmates, you have to be very very careful. So

he expressed great doubt about the candor that was possible in a group interview.

With this question, as with others, I asked the other inmates their attitude toward this particular statement; and they all agreed.

Q Mr. Bagdikian, did you find the group interview satisfactory for your purposes?

[18] A Not for the purpose that I visited the prison.

Q Why not?

A Because I visited the prison to talk firsthand to the principals in the case who were the members of the negotiating committee; and they were not in that group.

Q Mr. Bagdikian, did you go to Danbury?

A I did.

Q What happened there?

A I was similarly welcomed by Warden Norton, who explained to me that I was free to visit the whole institution, and urged me to do so, but that he was forbidden to permit me to speak to any particular prisoner and, of course, to the members of the elected negotiating committee there.

Q What did you do there? Did you specifically ask to speak to individual prisoners?

A Yes, I did.

Q What did the warden offer you in response to that; and what did you do?

A When I told him my Lewisburg experience, he said he would offer the same thing. He would permit me to pick names at random of prisoners and speak to them as a group in private. I thanked him but I declined the offer.

Q Why did you decline the offer?

A Because it was useless as a way of getting to the information that I needed.

[19] Q Mr. Bagdikian, you have in front of you Mr. Carlson's letter, and attached to that letter is the Bureau of Prisons policy of February 11.

On Page 2 of that policy there is Paragraph 4(b)(6), relating to interviews. Would you turn to that.

A Yes.

**Q** Did you discuss that with the wardens at these prisons?

**A** At great length.

**Q** Would you explain briefly to the Court what they said to you in terms of interpreting the phrase, "Discussion of institutional facilities, programs and activities"?

**MR. HANNON:** Will you identify which warden you are speaking of?

**THE COURT:** Yes, Mr. Hannon, I think that is quite appropriate.

**MR. CALIFANO:** Yes.

**BY MR. CALIFANO:**

**Q** Take the warden at Lewisburg first.

**A** Yes. Warden Alldredge at Lewisburg said that his interpretation was that members of the press may hold conversation with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities.

He said by that he meant the ongoing programs for the inmate population. It did not include strikes and things of [20] that sort. That these conversations would be casual ones, that I was free to walk around the institution with an escort, and if I ran across inmates and they wished to speak to me, I could speak to them in the presence of a staff member. But these were not to be prolonged and they would be about the activities. Activities, he interpreted to be educational and recreational activities.

**Q** Would you explain or tell the Court how the warden at Danbury interpreted those words?

**A** He interpreted it essentially the same way.

**Q** Mr. Bagdikian, you have mentioned at the beginning your experiences as a reporter. Would you tell us why you consider this news story still newsworthy?

**A** Well, because we have had an extraordinary occasion in a period when we have had some bloody and tragic prison rebellions, we have had two massive peaceful strikes in Federal prisons. We have had elected representatives of the prisoners, elected at the behest and encouragement of the prison administration, promised



that they could negotiate without reprisals, as long as they didn't conduct any illegal activity. We don't know what has happened.

THE COURT: Mr. Bagdikian, have any members of the negotiating committee at either of these institutions written you asking that you come and interview them?

THE WITNESS: Legal counsel for them have.

[21] THE COURT: No, that wasn't my question.

THE WITNESS: No, they have not.

THE COURT: In other words, there are no members of these committees that have asked for an interview with you?

THE WITNESS: No, Your Honor.

THE COURT: You say their lawyers have?

THE WITNESS: They have.

THE COURT: For some or all?

THE WITNESS: Well, they spoke for their clients but said it was the lawyers' information that groups of these committees would like to be interviewed.

I did receive a letter from—I am sorry.

THE COURT: Your letter is in the file, but that man is not on the negotiating committee, I take it, the letter that is in the jacket?

THE WITNESS: If I could examine the jacket, Your Honor.

I am sorry, I was mistaken. I did receive a letter from a man who is—

THE COURT: Is he a member?

THE WITNESS: Yes.

THE COURT: I am familiar with that letter. That was attached to your papers.

THE WITNESS: I am sorry, I was wrong.

THE COURT: Is that the only instance?

[22] THE WITNESS: I received some letters which were not signed. The implication of the letters was that they were on the committee and were being punished, but they were not signed.

I was also told in this group interview at Lewisburg that they believed that men in segregation did not have their mail privileges.

One man entered this room when he found out that we were having a group interview, one that was not selected but happened to be in the area; and he said he had written me a letter but I had not received it; that he had been punished but he had not been a member of the original committee.

BY MR. CALIFANO:

Q Mr. Bagdikian, in your judgment as a reporter of 25 years and an editor, in view of the studies you have made of the press, what is your judgment of the adequacy of the mail system currently in effect at the Bureau of Prisons, in terms of correspondence between reporters and prisoners?

A I think it is only slightly better than nothing and extremely inadequate.

Q Why?

A Because, first of all, apparently many prisoners do not believe that these letters are unread by the staff. There is a serious delay in time, especially when there is a matter of crisis in the prison, between the writing of the letter and receipt of it. If the prisoner makes allegations [23] in the letter, the only recourse open to me now is to write back to him and ask him about those allegations. My letter back to him is read by the prison authorities; and he knows that. The only way I can pursue allegations he makes is to disclose to the authorities what he has written to me in the first place. And in the passage of time, of course, the events may far outrun what may have been in the letters.

At the same time, in my experience as a newspaperman, nothing substitutes for face-to-face interview, in which you can study the demeanor of the man, pursue questions at once, watch reaction to things, confront him with things which seem to be internally inconsistent. A letter which is uncensored one way and censored the other way is an unsatisfactory way to do that, especially in the matter of urgent newsworthy episodes.

Q Mr. Bagdikian, what is your judgment of the value of group interviews of prisoners?

A My experience has been that they are of very limited value.

Q Why?

A For the reasons given by the prisoners at Lewisburg, plus the fact that in a group, the most forceful and articulate person may dominate, both by his being articulate and talking the loudest and most, and also by the psychological domination of others, and his fear that others may report or misinterpret what he says or that he may put himself in jeopardy because of [24] what he says from other inmates.

Q What is your judgment of the value of interviews in the presence of prison officials?

A I think the same way. Obviously, a prison official has almost total control over the life of his prisoner and he knows it. It would take an extraordinary prisoner who would say candid things, derogatory things about the men who control how long he would stay and under what conditions.

Q What is your judgment about the value of use or non-use of names in the Bureau of Prisons regulation in that respect?

A I think it should be up to the prisoner. In general, it is a much better practice to attach a man's name, first of all, so he will take responsibility for what he says, so the reader will have some way to judge that a man is taking responsibility for what he says; and then, if he knows his name is there, he is more apt to be careful and truthful and similarly more credible. But I think it should be up to him because he is in very special circumstances.

Q Mr. Bagdikian, what is your judgment, again in view of your experience, and if you have any with respect to the particular story in the prisons to which you wish to go, as to whether or not there will be a deluge of reporters or to what extent other reporters will be imposed upon the prison authorities?

A Well, I do know what the two wardens told me: That [25] after word got out that there was this extraordinary stoppage—

MR. HANNON: Just a moment. I object. He was asked a question and he is not answering the question.

**THE COURT:** Yes. I don't think what they told you is the test. What is your opinion, is what you are being asked, in terms of your own experience generally as a prison reporter.

**THE WITNESS:** I think there might be some newspapermen or news media people who would present themselves at prisons in the beginning, but I think this would fall off very quickly and there would be very few.

**BY MR. CALIFANO:**

**Q** Did the wardens at Danbury and Lewisburg tell you anything about visits by press or requests by the press for access to those prisoners?

**A** They did.

**Q** What did they say?

**A** They said that after word of the strike got out at both places, not a single newsman presented himself to the prison to ask about it; and that, in fact, at Lewisburg, after the strike had been on for some time, the warden invited a local editor in Milton, Pennsylvania, to visit the prison with a photographer, to show the prison was in good order; which, apparently he did; but he had to come by invitation.

Other than that, no newsmen physically presented themselves at the prison and the prison officials transmitted their [26] press releases by telephone and otherwise to the press.

**Q** Mr. Bagdikian, roughly, how many prisons did you visit when you were doing the series for the Washington Post?

**A** I would say a dozen or two. I visited a system and visited a large number of facilities in one system.

**Q** Was there any disruption at any of those prisons after you left?

**A** Not that I know of.

**MR. CALIFANO:** I think that is all, Your Honor.

### CROSS-EXAMINATION

**BY MR. HANNON:**

**Q** Mr. Bagdikian, I am interested in this forceful in-

mate that you reflect so much apprehension of, that you would encounter in a group interview.

Would you tell me something more about him, please?

A In my experience as a newspaperman—

Q In prisons?

A Everywhere.

Q Well, let's—

A Excuse me, sir. I was speaking not just of prisons. I was speaking of group interviews in general, which I thought was the question.

Q Perhaps we will get to that in a minute. But I want you to tell me about the forceful inmate that you fear will dominate a group interview that you would be conducting in a [27] penal institution, please.

A Well, as I said, in prisons, as in any place in a group, a single person with a forceful personality may dominate the group and inhibit a free exchange of ideas from other members of the group.

Q Would you be the one that would be conducting the interview under this circumstance?

A I am sorry, I don't understand.

Q Are you talking about a group interview that you might be conducting?

THE COURT: He doesn't want a group interview, for that reason, is what he says.

MR. HANNON: I understand that.

THE COURT: Then I don't understand your question.

MR. HANNON: I want to ascertain that he is the one that is present while the group interview is being conducted.

BY MR. HANNON:

Q Is that what you are saying, that you are apprehensive of group interviews that you might be conducting by virtue of the fact that some forceful inmate would dominate the interview? Is that correct?

A Well, yes, I would have that in mind if I did conduct such a group interview.

Q Would you have it in mind as well that you would be incapable of controlling the interview that you are conducting [28] with the group?



A I don't know what you mean by control.

Q Well, are you telling us that you, as a newspaper reporter, would lack the ability to control the group interview so that in fact a particular inmate would dominate the group?

A Well, I suppose—I have to speculate. I suppose I would do what—

Q I don't want you to speculate, Mr. Bagdikian. I want your best judgment, please.

A I wonder if I could hear that question again?

THE COURT: It is an absolutely meaningless question to me, Mr. Hannon.

MR. HANNON: Your Honor—

THE COURT: Because this gentleman has said that he doesn't want a group interview. So I don't understand what the thrust of the question is and I, myself, don't understand the question.

Perhaps you should rephrase it.

MR. HANNON: I merely want to elicit from him his judgment respecting whether or not he could control the group interview to prevent a single inmate from dominating the interview.

THE COURT: Oh.

MR. HANNON: That is all I am asking.

THE COURT: That was not clear to the Court from your [29] question.

The question, Mr. Bagdikian, is, where there is such a dominant person, do you feel you can prevent him from dominating the interview?

Is that the question?

MR. HANNON: Yes, sir.

THE WITNESS: I can ask him to be quiet and I can ask the others to speak up. But he can continue to speak, and the force of his personality might have an effect on others, other prisoners who are present; and I recognize that.

I can control it to the extent that I can tell him that I don't wish to hear any more from him and I would like to hear from somebody else.

BY MR. HANNON:

Q You did conduct a group interview at Lewisburg, did you not?

A I did.

Q Is that the only group interview you have conducted in a penal institution?

A It is not.

Q How many have you conducted in penal institutions?

A Several.

Q In what penal institutions and when?

A I can't give you precise dates, but I have conducted group interviews in the prison for aged and chronic prisoners [30] in South Carolina. I have conducted them in about four different work release centers in South Carolina.

Q Work release centers?

A Yes, part of the penal system.

Q Is that a halfway house?

A No, it is a work release center in which men are dormitoried under supervision in a local facility and work during the day outside the facility.

I have conducted group interviews in California prisons in Stockton. I have conducted group interviews at Alderson; I have conducted group interviews in Pennsylvania.

Q In the group interview you conducted at Lewisburg, was that dominated by any particular prisoner?

A There was one prisoner who was more articulate and eager to speak than others.

Q Would you answer my question, Mr. Bagdikian?

A Well, if you mean by dominated that he had control of the other prisoners, that I was unable to elicit responses from the others, that is not true, but—

Q All right, thank you.

A —but in terms of the time taken and the quickness to speak, and his relative articulateness, yes.

Q At these other institutions that you conducted group interviews, were any one of those dominated by any one particular inmate?

[31] A Yes, that generally was the case.

Q In which one, please?

A There was one in a cottage, a dormitory at Alderson. Well, I must say in practically every one there were some prisoners, as in all group interviews of all kinds I have ever conducted, who were quicker to speak than others.

In some of those institutions, after I had had the group interview, I then asked for private interviews with the more silent members who might feel freer to speak because they were less articulate, less educated than the people who spoke loudly and more readily.

Q You and I can agree, can we not, Mr. Bagdikian, in any penal institution we are going to find forceful, dynamic personalities that will attempt to dominate group interviews, if they are present?

A In any human group and also in penal institutions, yes.

Q Now, Mr. Bagdikian, what impact if any, in your judgment, would an inter-face interview conducted by you, that is to say, an interview conducted by you with such a prisoner have on the prison population in the event that after you had interviewed him and published your story, he is identified as the particular prisoner interviewed and as the one that gave you the story?

What impact would that, in your judgment, have on the [32] rest of the prison population?

A You mean if I published an interview with him and used his name?

Q Yes.

A I think it would depend on the circumstances of who the person was and what he said and what the circumstances in the institution were.

THE COURT: Of course, the question is broader than that, because even if you didn't use his name, if you came to a prison for an interview, everybody in the prison would know before you left that you were there interviewing.

THE WITNESS: I am sure that is the case.

THE COURT: Certainly everyone's experience is that the rumor market and word-of-mouth transfer of information among prisoners is very complete and very prompt. Isn't it, Mr. Bagdikian?

THE WITNESS: Yes, it is.

THE COURT: So even if you didn't publish his name, people would know that an individual interviewed had given you certain information.

You say then the effect would depend on what you wrote?

THE WITNESS: Yes, sir, and what the prisoner said and what he was talking about in terms of the context of the prison.

[33] MR. HANNON: Is Your Honor through?

THE COURT: Yes.

BY MR. HANNON:

Q Would it, in your judgment, Mr. Bagdikian, tend to inflate his importance over the relative importance of all other inmates in the institution?

A No more so than an interview with anybody else under any other circumstances.

Q Well, all right, I will accept that. Would an interview with any prisoner tend to inflate the importance of that prisoner in a penal institution over the relative importance of all other prisoners?

I will accept the thesis, yes.

Answer the question, if you will, please.

A Well, I am thinking of your phrase, sir, "inflate the importance." I can't say that it would inflate his importance. It might deflate his importance. There are people who get word out of prison one way or another. He can write me a letter and tell me to use his name and make unconfirmed and unquestioned allegations. It certainly would identify him as someone who has been interviewed and reported in the press. Whether that inflated his importance, I think would depend on the circumstances.

Q Well, a letter-writing exchange between you and he would not be the same, would it, in degree of importance, as [34] an actual interview by you of the prisoner within the penal institution?

Are you saying that it is the same?

A No, but I am saying that if the question is whether or not it would inflate the importance—well, if the reputation of this inmate would be better known as someone who has communicated with the outside, yes, that is true.

**THE COURT:** Mr. Bagdikian, what is being asked is, will not your interviews create Big Wheels in the penitentiary? That is what Mr. Hannon is asking you.

It is all through the papers, it is all through the literature about this problem. There is a concern that you can inflate the importance or ego or position of an individual prisoner to a point that his becoming a Big Wheel interferes with the general discipline in the institution.

Do you dispute that?

**THE WITNESS:** No, I don't think there is any question it would have an element of that, along with other ways prisoners make Big Wheels of themselves. I don't doubt at all in that case that would be true, that is a possibility.

**BY MR. HANNON:**

**Q** You recognize also as something more than a possibility that other prisoners would tend to look to him as a figurehead image and spokesman of the institution?

**A** Not necessarily, because—well, not necessarily.

[35] **Q** Do you believe that the effect of an interview by you with a prisoner that is published in the newspaper—

Excuse me, if I may interrupt.

When you were at Lewisburg and you were at Danbury, are you aware of the fact that the prisoners at both of those institutions have free and total access to whatever newspapers they wish?

**A** I wasn't aware that they had total and free access to any newspaper that they wished; but I am aware they can get some newspapers.

**Q** You are fully aware of the fact that the Washington Post can be sent into both Danbury and Lewisburg, are you not?

**A** Yes, I am.

**Q** Are you aware of the fact that it is sent into Danbury and Lewisburg?

**A** I have no reason to believe that it is not.

**Q** Are you aware of the fact that they have free access to television?

**A** I am.

**Q** And news on television?



A I am.

Q Do you know, Mr. Bagdikian, whether or not any of the prisoners at Danbury or at Lewisburg have had occasion to read your columns in the Washington Post since you started writing about these two institutions?

[36] A Yes, I do.

Q And what is the answer?

A The answer to what?

Q Have they read your columns at either of these institutions?

A I have reason to believe that some of them have.

Q From what you heard?

A From what some of them told me.

Q Now, Mr. Bagdikian, do you know the warden at Lewisburg?

A Yes, I do.

Q Is he present in the courtroom this morning?

A Yes, he is.

Q What is his name, please?

A Noah Alldredge.

Q Do you know the warden at Danbury as well?

A Yes, I do.

Q Is he present?

A Yes, he is.

Q What is his name?

A Warden Norton.

Q Tell us about your visit to Lewisburg, your first visit to Lewisburg in connection with the work stoppage or strike that you speak of, Mr. Bagdikian?

A Well, I arrived at the institution in the late morning [37] and was ushered into the warden's office, who was very gracious, especially since he was having, apparently, inspection visitation from the Federal Bureau at the same time.

Q That is Mr. Alldredge you are speaking of?

A Mr. Alldredge, I am speaking of. He made himself available, and the associate warden, Mr. Cansler, and John Kilkeary, who, among other things, serves as public relations for the prison, and we discussed the regulations. We discussed—

Q Did you ask for something prior to the time that you got into a discussion of the regulations?

A Oh, yes, I asked to see the members of the negotiating committee.

Q Who did you ask that of?

A The warden.

Q And what did he say?

A He said that that was not permitted.

Q Did he tell you where they were?

A I asked him how many of them were in segregation.

Q Did he answer that question?

A He did.

Q How many were there, did he tell you, who were in segregation?

A My recollection is that at that time there were eleven.

Q Eleven in segregation. You wanted to see and talk to these eleven?

[38] A I did.

Q Well, is that what you really wanted, to see and talk to them, or did you want to interview each of the eleven?

A I wanted to interview each of the members of the negotiating committee, including those who were in segregation.

THE COURT: Separately, I take it.

THE WITNESS: Separately, yes.

BY MR. HANNON:

Q So that you did not merely want to talk to them, you wanted to interview them; is that right?

A Well, yes, yes, I wanted to interview them.

Q Now, what Warden Alldredge told you was you could not be allowed to interview these prisoners; is that what he told you?

A I could not interview them privately and individually.

Q Now, did he offer you an alternative?

A He did.

Q Tell the Court, if you will, please, what was the alternative that Mr. Alldredge offered you?

A He offered two alternatives: The random selection which I have described previously.

Q That would be selecting prisoner cards at random?

A Right.

Q And if two of the cards happened to be members of the negotiating committee that were in segregation, then they would [39] have been presented to you?

A That is right.

Q And if not, then you would not have been able to talk to them?

A Right.

Q Now, is this the—

A Of course—

THE COURT: What was the other alternative?

THE WITNESS: The other alternative was he would let me walk through segregation and talk to prisoners there.

BY MR. HANNON:

Q Just segregation?

A Yes. Oh, no, he offered me the opportunity, as a matter of fact urged very strongly that I inspect the total institution and particular places in the institution which he thought I ought to see in connection with my visit.

Q Have you ever inspected or toured Lewisburg?

A I have inspected parts of it, toured parts of it.

Q When was that, prior to the strike business?

A That is right, right.

Q And so at the occasion that you are up there talking to Warden Alldredge about the work stoppage, you had seen part of the institution?

A Oh, there were many parts I had not seen.

Q Yes. What did Warden Alldredge tell you as an [40] alternative, which is what Judge Gesell asked?

A The second alternative was I could inspect segregation and talk conversationally with people in segregation but not in private and not individually.

Q Did he say that you couldn't talk to them in private?

A That is right. I could not speak to them by myself

without a staff member being present, without other prisoners being aware, being within hearing of these prisoners.

Q Now, you don't have any doubt but that he insisted that a staff member be present while you were talking to them?

A I don't have a doubt that he said I could not interview them privately and without the presence of others.

Q No, sir. I want to know whether at the time Warden Alldredge said that you could go to segregation and that you could talk to prisoners in segregation, in the event that you agreed to that, did he insist that an official of the institution be with you and listen to the conversations? Did he?

A He did not put it in those words. I asked him if I went to segregation, might I interview any men in segregation privately and individually; and he said, no.

Q All right. So we are clear on that, Mr. Bagdikian, what you cannot do and what Mr. Alldredge told you that you could not do was that you could not go to segregation and conduct interviews with men in segregation.

I now ask you, sir, is it not a fact that Mr. Alldredge [41] told you that you could go to segregation, you could carry on conversations with the prisoners in segregation; and is it not a fact, as well, that he did not say that an official of the institution had to be present so as to listen to these conversations?

A Well, my question to him was not that, sir.

Q Well, my question to you, Mr. Bagdikian, is whether or not the warden offered this to you? Did he, sir?

A He said: I will let you go down to segregation and talk to the prisoners.

And I said: May I speak to them individually, in private, without anyone else being present?

And he said: No.

THE COURT: You didn't explore whether you could talk to them as a group in private? You did not explore whether you could talk to them as a group in private?

THE WITNESS: I did not, sir. I rejected the opportunity to talk to them as a group.

BY MR. HANNON:

Q So you had an opportunity, did you not, Mr. Bagdikian, to talk to the prisoners in segregation and you rejected this?

A Under the terms that were laid down to me.

Q Because you are standing on a principle?

A Because I wanted the candid word of individual prisoners without their fear of being overheard by anybody.

[42] Q You rejected it, Mr. Bagdikian, did you not, because you felt that you were entitled to interview each one of these men in segregation and to report what they said and to use their names in reporting what they said, if they agreed to it?

A No, I rejected it because what I needed to do to get reliable information was to speak to a man in private when he was not being overheard by anyone else, including another inmate.

THE COURT: Then it is quite clear that the allegation of your counsel about a news blackout is not so; isn't that right?

THE WITNESS: [Illegible] until the time the warden—

THE COURT: The papers are full of statements of news blackout. It is just a blackout of the kind of news gathering that you prefer.

THE WITNESS: Yes, sir, plus a blackout, at the time that that was written, on the apparent causes of the strike, because steadily what the Bureau said, during the days and weeks of my inquiry of them as to the causes of the strike, is that they had no idea. So, to that extent, there was a blackout.

THE COURT: That, it also appears to me, Mr. Hannon—and I want to be sure I am not mistaken about this—that this post filing arrangement that was suggested at Lewisburg is inconsistent with the policy; or is it consistent with the policy?

MR. HANNON: I don't understand what Your Honor means by the post filing arrangement?

THE COURT: This interview we are talking about took [43] place after this suit was filed; and what I am



asking is this: He went back to Lewisburg after the suit was filed, and at that time, as I understand it from where we are now, the warden said to this gentleman: You may talk to a group of segregated prisoners without any official present and you may talk to them as a group.

MR. HANNON: That is it.

THE COURT: Now, is it the Government's position that that is consistent or inconsistent with the policy?

MR. HANNON: It is—

THE COURT: If I may, for a moment, Mr. Hannon. That is directed to a matter that came up and was not resolved at the last hearing as to what was meant by the portion of the policy relating to conversations.

MR. HANNON: It is consistent with the policy; it has been consistent with the policy since 1966.

I want to make it perfectly plain to Your Honor, so there will be no misunderstanding about it, what Mr. Bagdikian was offered was that he could go to segregation and he could converse with the prisoners in segregation. Now, I am not representing to the Court that anybody was going to take them out of their cells where they were in segregation.

THE COURT: I understand. That is unimportant.

MR. HANNON: He could go and talk to each one of them, if Your Honor please, and he could have conversed with them up [44] to some five to ten minutes.

MR. CALIFANO: I think counsel is testifying. He has a warden that can take the stand.

THE COURT: It is my fault but I wanted to follow the testimony. I am sure Mr. Hannon will come forward with testimony.

I am trying to have an understanding of the sentence in 6:

"However, conversations may be permitted with inmates whose identity is not to be made public if it is limited to the discussion of institutional facilities, programs and activities."

I may interpret that, Mr. Hannon, from what you say, as meaning conversations may be permitted with inmates without supervision by correctional authorities?

MR. HANNON: Without equivocation, Your Honor, yes.

THE COURT: That is what I wanted to get clear.

MR. HANNON: Yes, Your Honor, that is true.

THE COURT: Very well, thank you.

Excuse me for the interruption.

MR. HANNON: I have two wardens—

THE COURT: I imagine that will come along in testimony but I simply wanted to be in focus as to your position. Thank you.

[45] BY MR. HANNON:

Q Mr. Bagdikian, after you left Lewisburg without success in your quest for interviews of those in segregation, you went to Danbury, did you not?

A I did.

Q Now, did you phone Warden Norton at Danbury before you went up there?

A I did.

Q Did you tell him on the telephone why you were coming?

A I did.

Q Now, tell His Honor, if you will please, the dialogue, the conversation that you had with Warden Norton before you went to Danbury?

A Originally I had informed the Bureau here in Washington—

Q Excuse me. I want you to tell us about the telephone conversation that you had—

THE COURT: The conversation with the warden.

THE WITNESS: Yes. I called the warden late on, I believe it was Monday, after the hearing, to inform him that while the Bureau had been told that another reporter would visit his institution the following day, that the plan had been changed and that I would visit the institution the day after, so he would know of the change of plans. And I told him why I would like to come up.

[46] BY MR. HANNON:

Q What did you tell him, please?

A I said I wanted to come up and interview members of the elected negotiating committee of prisoners.

Q What did he tell you?

A He said he hoped I would tour the institution and see the whole thing, that I had never been there and that I ought to do that.

I said that was not the purpose of my visit.

Q And did you reiterate the purpose of your visit?

A Yes.

Q To interview those men in segregation?

A No, not necessarily in segregation, but the men who were on the negotiating committee.

Q Did Warden Norton tell you that you would not be allowed to interview these prisoners?

A He did, but I told him that there seemed to be some confusion in the regulation as between the conversation and an interview and between what an activity was inside an institution, and I was interested in holding conversations about the fate of the negotiating committee in that activity which was the strike.

Q Now, nobody told you, did they, Mr. Bagdikian, that you could not converse with these prisoners respecting the strike or the work stoppage? Neither Warden Alldredge nor [47] Warden Norton ever told you that, did they, sir?

A When I asked them for the interpretation of that sentence in Section 6, they told me, and then I repeated this in each case, to make sure I had it straight. I said: What do you mean by a conversation about activities?

And they said, in both cases, essentially this: That you may tour the prison with an escort, and any prisoner you see as you walk around at random, who wishes to speak to you, you may speak to and you may chat with—I believe it was Warden Norton saying “chat”—meaning three or four questions.

I said: What do you mean by activities?

They said: The recreation and education programs within the prison.

I said: Does that mean the strike and punishments?

And they said: No.

Q They told you that you could not talk about the strike?

A They said that their interpretation of "activities" did not include that.

THE COURT: But they were not confining their permission to you to the policy. Certainly at Lewisburg there was no limitation on your talking with the group in segregation about the strike, was there?

THE WITNESS: There was not. The warden said he was making an exception to the rules, he was going beyond the rules in this case.

[48] THE COURT: Did they agree to go beyond the rules also at Danbury?

THE WITNESS: He did. He said he would offer me the same thing that Warden Alldredge had.

BY MR. HANNON:

Q But is it your testimony, Mr. Bagdikian, that Warden Alldredge and Warden Norton told you that when you toured the institution, when you conversed with prisoners, that you could not talk to these inmates about the strike? Is that your testimony, sir?

A No. They said that their interpretation of that regulation was that talk about activities meant talking about the ongoing programs of the institution.

When, in fact, I did tour, walk through the institution and did stop a prisoner at random, I did in fact talk about the strike; and they did not stop me.

Q Well then, you haven't answered my question, Mr. Bagdikian, I don't think; and I want you to answer it, sir.

I had understood you to testify here this morning that Warden Norton and Warden Alldredge told you that you could not talk to inmates about the strike. Now, did they or did they not?

A They told me I could not talk, I could not interview the members of the negotiating committee about anything.

Q All right, Mr. Bagdikian. I pass that for the moment.

[49] Now, you had a telephone conversation with Warden Norton before you went to Danbury?

A I did.

Q Was there any doubt in your mind, after you concluded that telephone conversation, respecting what privileges would be accorded to you by Warden Norton when you reached Danbury?

A Not from his literal words.

Q But you went to Danbury anyway, sir, did you not?

A Yes, I did.

Q Will you tell us why you went to Danbury anyway?

A Because I had gone to Lewisburg being told that it would be forbidden to interview members of the inmate committee and that it wouldn't be possible to have private interviews, but in fact I had been offered a group interview, which turned out to be unproductive. But it was different and I hoped in Danbury maybe in the meantime there would be a similar departure from the regulation and permit me to speak to the members of the committee who had been elected to negotiate the strike.

Q Did Warden Norton tell you on the telephone that you could have a group interview at Danbury if you came?

A No, he did not, not to the best of my recollection.

Q He did tell you that when you reached Danbury?

A After I told him my experience at Lewisburg, he said he would offer me the same thing.

Q Did you accept it?

[50] A I did not.

Q You left without taking advantage of the group interview?

A That is right.

Q How many prisoners are there at Danbury?

A I think that day there were something like 730.

Q Projectionwise, the possibility of your meeting one of the negotiating team in the group interview would be greater at Danbury than it would have been at Lewisburg; would it not?

A Not necessarily, because—let me think of the mathematics. There were, as I recall—

THE COURT: Fifteen is a greater percentage of a lower number.



**THE WITNESS:** But they had a different number of members of the committee. But it was a very small statistical method and it seemed to me a strange way to go about getting at the facts when you knew the sources of the facts. And the odds were very small. And the group interview was very unproductive of the individual ten at Lewisburg.

**Q** When you talked to the group at Lewisburg, Mr. Bagdikian, there was no official of the institution present, was there?

**A** There was none. They were visible through a big window in the door, but they were not in the room.

**Q** Did you talk to those prisoners about the strike?

[51] **A** I did.

**Q** Were they informative?

**A** They gave their impressions and some individual experiences.

**Q** Now, did they tell you that under the new policy they didn't believe that their letters to the press were being sent out of the institution uncensored?

**A** Six of them said that. Six of them said they believed that they were not sent out uncensored.

**Q** Now, you have no knowledge, no personal knowledge that the letters are in fact censored before they are transmitted out of the institutions, do you, Mr. Bagdikian?

**A** No, I do not.

**THE COURT:** What I don't understand, Mr. Bagdikian, is this: You are a newspaperman and you had these interviews. Why didn't you publish?

**THE WITNESS:** I did, sir.

**THE COURT:** You published what the Danbury people told you?

**THE WITNESS:** I had an individual interview with a random prisoner I ran across in the yard, but it was not productive of anything newsworthy.

**THE COURT:** Did you publish the group interview at Danbury?

**THE WITNESS:** I did not have one at Danbury, sir.

[52] **THE COURT:** Did you publish the group interview at Lewisburg?

**THE WITNESS:** I published an account of that. I published that I had such an interview and what seemed to be the salient points that came out of that but none of them, of course, relating to the fate and punishment of the inmate negotiating committee.

**BY MR. HANNON:**

**Q** This was uppermost on your mind, was it not, Mr. Bagdikian, the fate and the punishment?

**A** The method of resolution of the strike, yes.

**Q** Uppermost on your mind?

**A** Yes.

**Q** Well, when you got to Danbury, did Warden Norton say to you—

Excuse me.

He did tell you on the telephone: I encourage you to come and I encourage you to tour Danbury. You haven't been here before. Did he tell you that?

**A** He did.

**Q** When you got to Danbury, did he again say to you: Mr. Bagdikian, we encourage you to tour Danbury; we want you to see it.

**A** He did.

**Q** Did he tell you, Mr. Bagdikian, that if you toured [53] Danbury, that you could converse with prisoners as you conducted your tour?

**A** Under certain conditions.

**Q** Under what conditions, sir?

**A** I asked him—

He said, if I toured the institution and I came across a prisoner at random, that I could chat with him.

I said: What do you mean by chat?

He said: Well, you know, nothing in depth, three or four questions.

I said: If I ask him about the strike, or anything else, and my escort is standing nearby, and I ask the escort to stand aside where he can't hear, or if I ask the prisoner to come to one side where the escort can't hear, will that be permitted?

And he said: Well, we don't want to be unreasonable but that is against the rules.

Q He said that he wanted an official with you listening to whatever conversations you conducted?

A No, he said what I just testified to, sir.

Q I paraphrased it.

A No. I want to stress that he was not unfriendly but he was trying to do what he felt he could under the rules.

Q Did he tell you you could go to segregation and talk to the prisoners that were in segregation?

[54] A I don't recall that he did not. But he said, he offered me a tour of the entire institution and I assumed that included segregation.

Q Did you understand, Mr. Bagdikian, since you were getting a complete tour of the institution, that you would have been able to converse with prisoners that were in segregation that were on the negotiating committee that you referred to?

A Not in private and not out of the hearing of an official escort.

Q So that you knew you could converse with them but you were under the impression any conversation you had with them would be only in the presence of an official of Danbury?

A And only a few questions and not carried in depth.

Q You have no doubt about the fact that Warden Norton said any conversations you had with them must be in the presence of a prison official?

A I asked him what would happen if I asked the prison official to stand out of hearing; and he said that would not be possible.

Q The Government would what?

A That that would not be possible. Because, in fact, we did run across such a prisoner, and I did attempt to hold such a conversation; and after I came back, I asked both the Associate Warden, who was with me at the time, the escort, and the Warden, after we returned to the Warden's office, what [55] would have happened if I asked the Associate Warden, my escort, to stand aside and permit me to interview this prisoner that I found at random at some length; and they told me that would not be permitted.

Q Well, is there a difference between your understanding respecting the manner in which you could conduct conversations with prisoners at Lewisburg and the manner in which you could conduct conversations with prisoners at Danbury?

A Not substantially.

Q Isn't it clear in your mind—

THE COURT: There is a clear difference in the testimony. We are really just spinning our wheels now. There is a clear difference in the testimony that there was a somewhat different position taken at the two institutions. Slight, but a somewhat different position.

BY MR. HANNON:

Q Now, Mr. Bagdikian, has, in fact, a member of the so-called negotiating team of either one of these two institutions written to you and asked you to come up and interview them?

A One member of the negotiating committee at Lewisburg wrote and said he felt he was in jeopardy.

Q But he didn't ask you to come up and interview him, did he, Mr. Bagdikian?

A He said he wanted me to do something about it.

[56] Q Have you got the letter, please?

THE COURT: It is in the record.

THE WITNESS: And I was reached by lawyers who represented themselves as representing members of the inmates who asked me to interview them.

BY MR. HANNON:

Q Did you—

A And I wished, as a newspaperman, to interview them or at least to find out if they would consent to interview.

Q Did you tell the lawyers to request their clients to write to you?

A I did not.

MR. HANNON: May I have Your Honor's indulgence, please.

I have no further questions. Thank you.

THE COURT: Do you have any questions?

MR. CALIFANO: Just a couple, Your Honor.

## REDIRECT EXAMINATION

BY MR. CALIFANO:

Q Mr. Bagdikian, you stated on cross-examination that you had an interest in the fate of these strike leaders.

Did you have other interests about this story?

A Yes, sir.

Q Could you indicate what those interests were?

A Yes. There were some claims that I received in mail and otherwise that some men at Lewisburg had been clubbed and [57] maced in their cells, that prescribed medication had been withheld from strikers, members of the striking committee; and I was interested in inquiring into that.

Q Did you have interest in anything other than strike leaders?

A Well, I was interested in the resolution of this extraordinary event which had been done without bloodshed, with elected representatives of prisoners, and which was so different from places like Attica and San Quentin, that there was obvious public interest to find out how this happened and why it happened and also why there had seemed to be reprisals, contrary to the promise that there would be none.

Q Mr. Bagdikian, would you just state once more, so we all have it clearly, what you were told was meant by a conversation?

THE COURT: Oh, no. I have heard enough about that.

MR. CALIFANO: All right.

THE COURT: He has been over that time and time again.

BY MR. CALIFANO:

Q Mr. Bagdikian, Mr. Hannon asked you, and Judge Gesell, about the Big Wheel complex, in terms of problems relating to personal interviews.

Do you see any difference between the use of a man's name in the Washington Post, as a result of a personal interview, which is prohibited under the regulations, and



the use [58] of a man's name in the Washington Post as a result of a letter he writes you, which is permitted, in terms of its impact on the prison or the press—or the prison, the Big Wheel problem?

A Under the present circumstances, no.

MR. CALIFANO: Your Honor, I don't know whether you want to put this in evidence. This is Mr. Bagdikian's story which he can identify.

MR. HANNON: I can't hear you.

THE COURT: I have no interest in the story.

He wants to know whether there is any point in putting Mr. Bagdikian's story in evidence. I said, not that I see.

MR. CALIFANO: That is all.

THE COURT: Very well, thank you.

MR. HANNON: May I ask two questions, Your Honor?

THE COURT: All right, Mr. Hannon.

### RECROSS-EXAMINATION

BY MR. HANNON:

Q Mr. Bagdikian, if you were so concerned respecting whether or not people had been clubbed and mace had been used on them, when the work stoppage was put down at Lewisburg, why didn't you take advantage of the tour that was offered to you so that you could have visited the hospital and encountered any prisoners that may have been clubbed or maced?

A Because I didn't trust group interviews where prisoners were in a condition of some perceived jeopardy to [59] themselves.

Q Then if you were so concerned, Mr. Bagdikian, respecting whether or not reprisals had been visited upon the so-called negotiating team, why did you not take advantage of going to segregation to converse with these prisoners, even if an official of the institution was going to be present?

A Because I had already satisfied myself that they had been punished and had the warden's version of why

they had been punished; and for the same reason, that in a group, there is a feeling of jeopardy, what they would say as overhead by other inmates who are not connected with them.

Q In your conversations with both Warden Alldredge and Warden Norton, they held nothing back from you, did they, Mr. Bagdikian?

A They spoke freely, and I asked them about these questions.

Q Did you at Lewisburg, Mr. Bagdikian, ask Warden Alldredge if you could talk to the medical people of the institution?

A I did not.

Q They would have been in a position to inform you whether or not anybody had been clubbed or maced, would they not, sir?

A Not necessarily.

MR. HANNON: Thank you very much.

[60] THE COURT: Very well. You are excused, Mr. Bagdikian.

(Witness excused.)

THE COURT: Do you have another witness?

MR. CALIFANO: Yes, Your Honor. Mr. Wilson will question him.

MR. WILSON: Benjamin Malcolm, please.

WHEREUPON—

**BENJAMIN MALCOLM**

was called as a witness by the Plaintiff, and having been first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. WILSON:**

Q Sir, would you state your name and address for the record, please.

A Benjamin Malcolm, 114-65 177th Street, Saint Albans, New York. M-A-L-C-O-L-M.

Q Mr. Malcolm, where are you employed and what position do you hold?

A I am the Commissioner for the New York City Department of Correction, in New York City, New York.

Q Does that position make you the chief executive officer of that department, sir?

A It does.

Q Have you held any other positions with the Department of Correction in New York City?

[61] A Yes, I was the Deputy Commissioner prior to this appointment.

Q When were you appointed Commissioner?

A January 19, 1972.

Q How long did you serve as Deputy Commissioner?

A Since December 14, 1970.

Q Did you have any previous experience in corrections work?

A Yes. I started in 1948 as a parole officer in New York City and went up through the ranks over a period of 19 years to a position of Deputy Chief Parole Officer in New York City.

Q Mr. Malcolm, would you describe for me the facilities that you have under your jurisdiction?

A Yes. The Department of Correction supervises fourteen different facilities, nine major facilities comprised of detention facilities, as well as sentence facilities. It is comprised of the Manhattan House of Detention, Bronx House of Detention, Brooklyn House of Detention, the Queens House of Detention, the Queens Annex House of Detention, the Adolescent Remand Shelter, on Rikers Island, the Adult Remand Shelter on Rikers Island, the New York City Correctional Institution for Women, which is comprised of both detainees and sentence females, New York City Correctional Institution for Men on Rikers Island. Also comprised of three prison wards and two residential [62] facilities, for a total of fourteen.

Q The Manhattan Hall of Detention that you mentioned, is that popularly known as The Tombs?

A Yes, it is.

Q What is the average daily population of your facilities?

A Total, 11,500.

Q During the course of a year, how many individuals would be processed through your facilities?

A Approximately 110,000.

Q What types of prisoners do you house in the facilities you have described?

A We have detainees—

THE COURT: Why don't you move ahead with what you want to bring out with this man. I have a general knowledge of corrections. I imagine he has almost every kind of problem known to man.

MR. WILSON: Yes, Your Honor.

THE WITNESS: That is correct, Your Honor.

THE COURT: All right. Now what is it you want to bring out from this gentleman?

MR. WILSON: I wish to mark some documents for identification, Your Honor.

Mark this Plaintiffs' Exhibit No. 1, for identification.

Number 2, for identification.

Number 3, for identification.

[63] THE DEPUTY CLERK: Plaintiffs' Exhibits 1 through 3 marked for identification.

(Whereupon, amendment to rules and regulations dated January 4, 1972 was marked Plaintiffs' Exhibit No. 1, for identification.)

(Whereupon, guidelines for identifying members of the news media was marked Plaintiffs' Exhibit No. 2 for identification.)

(Whereupon, amendment to rules and regulations was marked Plaintiffs' Exhibit No. 3, for identification.)

(Whereupon, the documents were shown to Defendants' counsel.)

MR. HANNON: Do you have extra copies? Could you let me have a set.

BY MR. WILSON:

Q Mr. Malcolm, I hand you Plaintiffs' Exhibit No. 1, for identification, and ask you if you can identify it?

A Yes, I can.

Q What is it, sir?

A This is a General Order promulgated by the Department of Correction. It is an amendment to the rules and regulations concerning interviews of detention inmates by accredited [64] reporters.

Q What is the date on that document?

A January 4, 1972.

Q Does this document reflect the current policy of your department with respect to interviews of inmates by accredited reporters?

A Yes, it does.

Q I ask you to look at Plaintiffs' Exhibit No. 2, for identification. Can you identify that document, sir?

A Yes, I can.

Q What does it purport to be?

A This document sets forth the guidelines for the news media, defines "accredited reporters," and sets forth the guidelines that they are to follow.

Q How does that relate to Plaintiffs' Exhibit No. 1, for identification?

A The only distinction between the two is the first document permitted interviews by taking away a regular visit, whether it be the family or not.

Q Excuse me, I don't think you understood my question.

THE COURT: Does the second exhibit implement the first?

THE WITNESS: Yes, it does.

THE COURT: Very well.

[65] BY MR. WILSON:

Q Mr. Malcolm, would you describe the procedures set forth in Plaintiffs' Exhibit No. 1, for identification, concerning interviews with inmates in your facilities?

A Yes.

THE COURT: I can read the document. Do you want to hand me a copy?

MR. WILSON: Yes, sir.



**THE COURT:** There is no point in his reading the document.

(Whereupon, the documents were submitted to the Court.)

**THE COURT:** I think these documents are quite self-explanatory. You may have some particularized questions, Counsel, that you may want to ask.

I have read both of them.

**MR. WILSON:** Yes, Your Honor.

**BY MR. WILSON:**

**Q** Mr. Malcolm, Paragraph 1 of Plaintiffs' Exhibit No. 1, for identification, recites that it amends General Orders No. 6, dated April 21, 1971.

Would you tell the Court, please, what General Orders No. 6, dated April 21, 1971, is, please?

**A** Well, this is a very simple order which permits members of the news media, accredited members, when they make an application to an inmate to request an interview, the inmate [66] notifies the warden of the particular institution, and if he agrees to accept the interview, he must state so in writing and the interview is arranged.

**THE COURT:** I think the question being asked you is whether this is the first time that interviews were permitted or whether under the prior order, as amended, interviews were permitted?

**THE WITNESS:** The interviews were started April 21, if that is the question, 1971.

**THE COURT:** In other words, there was an earlier order back on April 21, 1971?

**THE WITNESS:** That is right.

**THE COURT:** And this is a refinement of it?

**THE WITNESS:** That is right.

**THE COURT:** I think that is what counsel was asking.

**MR. WILSON:** Yes, Your Honor.

**BY MR. WILSON:**

**Q** What was the policy of your department prior to April 21, 1971?

A We permitted sealed letters to go out with no censorship, and also coming in letters were examined for contraband but not censored.

Q With respect to correspondence with members of the press?

A With anybody.

[67] Q Did your department permit, prior to April 21, 1971 interviews by the press with inmates?

A We did not.

Q Mr. Malcolm, Plaintiffs' Exhibit No. 1, for identification, how does that change General Orders No. 6, dated April 21, 1971?

A Well, this simply permits the interview to take place at a time when it does not take away a visit, a regular visit from the inmate. The prior order said he could have a press interview but it would be considered one of his regular visits.

Q How many visits are inmates permitted?

A Two a week.

Q Two a week. So the prior order would require him to give up a regular visit to see a member of the press?

A That is correct.

Q Is this the only change that Plaintiffs' Exhibit No. 1, for identification, has?

A That is the major change.

MR. WILSON: Your Honor, I wish to offer Plaintiffs' Exhibits 1 and 2, for identification, in evidence.

THE COURT: They may be received.

(Whereupon, Plaintiffs' Exhibits 1 and 2 were received in evidence.)

THE COURT: Mr. Witness, what is meant by "b" on Page 2:

[68] "The head of the institution deems the arrangement to be administratively appropriate."

What do those weasel words mean, in terms of operating the interviews?

THE WITNESS: Where is this, Judge?

THE COURT: This is dated January 4, 1972. It is General Orders No. 2, on the second page of General Orders No. 2:

"The head of the institution deems the arrangement to be administratively appropriate."

What does that mean?

THE WITNESS: It means that during the period of a day, for example, in our counsel room, you may have six or seven attorneys working at one time, and from an administrative point of view, the interview couldn't take place at that particular time. So it gives him some leeway.

THE COURT: In other words, if the interviewing facilities are already clogged up with attorneys, or something else?

THE WITNESS: That is correct. This is a very busy place.

THE COURT: But it is not designed to give the head of the institution or his superiors the opportunity to refuse because of conditions in the particular institution at the time, in terms of riots or strikes?

THE WITNESS: Oh, yes, yes.

[69] THE COURT: Emergency situations?

THE WITNESS: Right, it gives him that opportunity, too.

THE COURT: He could refuse it then?

THE WITNESS: He could refuse it, but the final decision would be made by myself as the Commissioner.

THE COURT: Yes.

THE WITNESS: But he could refuse it.

THE COURT: In other words, if there was a problem with a particular prisoner who had been unruly or disruptive, and he was concerned about the interview, he could also invoke this administrative appropriateness?

THE WITNESS: That is right.

THE COURT: Then that would be reviewed by you?

THE WITNESS: That is correct.

THE COURT: And the Commissioner?

THE WITNESS: I am the Commissioner.

THE COURT: Yes. I was thinking you were a Deputy before that. But not when that was in effect, I guess, is that right?

THE WITNESS: Yes.

THE COURT: Now, have many interviews of the press been refused?

THE WITNESS: Very few.

[70] BY MR. WILSON:

Q Under the policies now in force, Mr. Malcolm, can inmates in your facilities be interviewed in private by members of the press?

A They can.

Q Must a staff member be present?

A No.

Q Can an inmate who agrees to an interview have his name revealed by the press?

A Yes.

Q Are there any limitations imposed by your regulations on the content of an interview?

A There are no regulations. It is a private interview. He can say what he wants to say.

Q Mr. Malcolm, are any changes contemplated in the policy reflected in Plaintiffs' Exhibit No. 1

A Yes.

Q Mr. Malcolm, I show you Plaintiffs' Exhibit No. 3, for identification, and ask you if you can identify it?

A Yes, I can.

Q What does Plaintiffs' Exhibit No. 3, for identification, purport to be?

A This is a General Order that will go into effect on Monday, expanding our facility for interviewing to electronic news media, T.V. camera, the tape recorder, and liberalizing [71] our policy. Also, it widens the discretion that the warden or the commanding officer of the individual institution has. It doesn't confine him to a nine-to-three. If he sees fit to conduct the interview at 6:00 o'clock in the evening, he can do this.

This policy has already been in effect but we are just writing it. We are actually doing this; we have been doing it for at least two or three weeks now, letting the electronic media come in.

Q Under the policy that is reflected in Plaintiffs' Exhibit No. 1, the electronic media were excluded, according to that written policy?

A That is correct. No tape recorders, cameras or devices of that sort.

Q Under that policy there were strict time limitations imposed on when interviews could be conducted?

A They were strict but they were not that strict. They were not confined; we did not hold to the nine-to-three rule.

Q Why were the electronic media initially excluded from your policy of your department?

A We felt it could in some way have an effect on the security, the harmony of the institution; and for that reason we excluded it.

Q Why have you now changed that policy?

[72] A Well, we have had ample time to examine our track record since last April, and we haven't had any problems, and we feel we should move forward into another area.

Q In fact, up to now, there have been instances in which the electronic media have been inside your facilities?

A Yes.

THE COURT: I noticed in the press the other day that in The Tombs you had opened up the prisons to children.

THE WITNESS: That is correct, sir.

THE COURT: I take it generally you have been liberalizing in New York the visiting privileges.

THE WITNESS: That is correct, sir.

THE COURT: With respect to the press, since this policy has been in effect, what aspects of it have been beneficial and what aspects have been detrimental, as you see them, to the operation of the prison system?

THE WITNESS: Well, of course, the credibility, I think, of corrections, I know, in New York State, has been somewhat hampered, somewhat hurt in the last year or so. We felt by liberalizing the policy and letting the press come in and letting the community come in, letting the church come in, letting a whole host of people come in, we would begin to let the public see what we are doing; and we encourage it.

THE COURT: My question to you is—and I see why you have done it—on the basis of your experience so far, [73] have you found that it has advantages, some ad-



vantages and some disadvantages; and could you indicate to the Court both what you found to be the advantages and the disadvantages from what we call this liberalized policy?

THE WITNESS: Yes. We find that it has been advantageous to do this because it begins to tell the public what we are doing, and it begins to erase, eliminate doubts people have had. These are the major advantages that we have had. It also alleviates tensions in our institutions, as far as I can see.

I haven't found it to be disadvantageous. On the 20th of this month, we had Senator Javits and Senator Buckley, followed by 35 or 40 members of the press, and this has been helpful, because we are going to ask them to try to get us some money to do some of the things we need.

THE COURT: In individual facilities, have you had conditions arise that you feel were created by giving the prisoners this access which have in some way impeded or interfered with the correctional process?

THE WITNESS: No.

THE COURT: Do you follow what I am talking about?

THE WITNESS: I understand what you are saying. We haven't found that.

THE COURT: Have you seen any Big Wheels developing because of this?

[74] THE WITNESS: There are some prisoners in our institutions who are considered Big Wheels right along and they have been interviewed; and I don't think the wheel is any bigger now than it was before.

BY MR. WILSON:

Q Mr. Malcolm, Plaintiffs' Exhibit No. 1, which reflects your present policy, deals only with interviews of inmates by accredited reporters.

Are there any other forms of access that the press has to your facilities?

A Yes.

Q What are those, sir?

A As I mentioned a minute ago, when various dignitaries visit our institutions, they are usually followed by the press.

During the summer we had Senator Hughes, who is head of the Subcommittee on Narcotics and Alcoholism, with Senator Schweiker and Senator Harris and Senator Javits. We have many such occasions and the press usually comes. We take them through our institutions. They are able to chat, not in-depth interviews, but chat with the inmates.

On other occasions, when the news media wants to do a story, an in-depth story about conditions in the institution, we let them come in. And in a fourth instance, when we have major affairs, such as recently we had the Belfonte show, we had the James Brown show, athletic activities, the press is [75] invited in and they come in. On occasions like the latter two, they don't talk with the inmates at all.

Q When the press wishes to do an in-depth story in one of your facilities, are interviews with inmates permitted in conjunction with that?

A Yes.

Q Mr. Malcolm, has it been your experience in the position you now hold and the position you held previously that the question of corrections is important to the press in New York City?

A Very important, very important.

Q Mr. Malcolm, what experience have you had in terms of the frequency of requests from the press to interview individual inmates?

A Well, it hasn't been frequent at all. During the past year, since April 21, we could only count about thirteen men that have been interviewed at about a half dozen different times.

MR. WILSON: May I have a moment, Your Honor.

Could I have this marked as Plaintiffs' Exhibit No. 4, for identification, please.

THE COURT: Yes.

THE DEPUTY CLERK: Plaintiffs' Exhibit No. 4 marked for identification.

[76] (Whereupon, memorandum dated March 22, 1972 from Mr. Walsh to Mr. Malcolm was marked Plaintiffs' Exhibit No. 4, for identification.)

THE COURT: Do you have a copy for me?

MR. WILSON: Yes.

(Whereupon, the document was submitted to the Court.)

THE COURT: I am going to receive all of these as explanatory of the testimony.

(Whereupon, Plaintiffs' Exhibits 3 and 4 were received in evidence.)

BY MR. WILSON:

Q Mr. Malcolm, I show you Plaintiffs' Exhibit No. 4, for identification, and ask if you can identify it?

A Yes. This is an internal document that I asked one of my staff members, who is in our public relations section, to prepare for me; and it lists the number of people who have been interviewed since we started this policy throughout the system.

Q Mr. Malcolm, are you the custodian of the documents of the Department of Correction in New York City?

A Yes, I am.

Q How did Mr. Walsh obtain the information contained in Plaintiffs' Exhibit No. 4, for identification?

A Well, in each institution there is a jacket, an inmate [77] jacket, and he no doubt received it from the jacket. Of course, all of these interviews are arranged through the office that Mr. Walsh works in. He is really an assistant to the public affairs director.

Q Do the policies of your department require that a record be maintained of interviews or requests for interviews with inmates?

A Yes.

Q To the best of your knowledge, does this document, Plaintiffs' Exhibit No. 4, for identification, accurately reflect your experience with press requests for interviews with inmates since April 21, 1971?

A Yes, it does.

MR. WILSON: Your Honor, I would like to offer Plaintiffs' Exhibit No. 3, in evidence.

THE COURT: I have received 1 through 4.

Could we take a five-minute recess now, gentlemen, before Mr. Hannon asks any questions if he has any?

MR. HANNON: I have no objection to a recess at this time, Your Honor. I have questions.

THE COURT: I thought you would. Perhaps we could break now.

I take it you have finished your direct?

MR. WILSON: Just a couple more questions.

THE COURT: Let's finish up the direct and then we [78] will take a recess.

BY MR. WILSON:

Q Mr. Malcolm, could you identify Mr. Herbert Blyden, who is mentioned in Plaintiffs' Exhibit No. 4?

A Yes. Mr. Blyden is presently in the Bronx House of Detention to stand trial for his participation in the riots of 1970. He was brought down from Attica Prison, where he is serving a sentence there for robbery.

Q Is he well known?

A He is quite well known.

Q The document also makes reference to the Harlem 4. Would you identify the Harlem 4?

A Yes. This is a very sensational case back in New York City, which started eight years ago with six young defendants who had an alleged murder case against them. It is now down to four. They have had three mistrials, three hung juries, rather; and they are still there; and there has been a great deal of sentiment around this particular case.

Q In general, are the names of the inmates contained in this documents well known within the City?

A Not all of them. I would say Mr. Blyden, the Harlem 4, the Pyle Brothers. These are, I would say, the well-known names.

Q One further question. Does your policy on press access apply to pre-trial detainees as well as to those under [79] sentence?

A It applies to all of them.

MR. WILSON: One moment, Your Honor.

That will be all.

THE COURT: We will take five minutes.

(Whereupon, a short recess was taken.)

MR. WILSON: Your Honor, may I ask just two more questions?

THE COURT: Yes.

BY MR. WILSON:

Q Mr. Malcolm, is H. Rap Brown confined to one of your facilities?

A Yes, he is.

Q Does your policy permit him to be interviewed by the press?

A It certainly will.

MR. HANNON: If Your Honor please, my associates tell me you said you have a jury trial this afternoon at 2:00 o'clock; is that correct?

THE COURT: I am not going to go forward with the jury trial until the hearings on this matter are completed.

MR. HANNON: I have brought Mr. Procunier in from California.

THE COURT: I am quite aware of that, and if I have to put off the criminal trial, I am going to do it. I am going [80] to hear this matter out.

MR. HANNON: Oh, very fine. Tomorrow morning he has a conference with 200 judges in California, so I do want to get him out of town tonight.

THE COURT: I think that is more than an adequate reason. This is a case that I may have to continue but I am going to hear this through to conclusion. I would expect and rather hope we will be able to do it today.

MR. HANNON: I would hope so, too.

THE COURT: If I don't draw the jury in the other case until tomorrow morning, that is what we will do.

MR. HANNON: You put my mind at ease, Your Honor. Thank you.

THE COURT: I would plan to adjourn at the usual time of 12:30 and come back at 1:45.

MR. HANNON: Yes, sir.

THE COURT: Which is the way we will proceed.

MR. HANNON: Yes.

## CROSS-EXAMINATION

BY MR. HANNON:

Q Mr. Malcolm, I understood you to say that you have about 11,500 persons institutionalized at the present time?

A That is correct.

Q In the course of a year you handle about 110,000?

A That is correct.

[81] Q Is it fair to say you have an in-and-out program going up there in New York City?

A About 7500 of the total of 11,500 are detainees. The others are sentence prisoners.

Q Seventy-five per cent are detainees?

A No, I said 7500. I said approximately 65 per cent are detainees.

Q If my arithmetic is right, then, 35 per cent are in under sentence for correctional purposes?

A That is correct, sir.

Q Now, Mr. Malcolm, I want to show you Government's Exhibits 1, 2 and 3—

THE COURT: I think you mean Plaintiffs'.

MR. HANNON: Plaintiffs', yes.

BY MR. HANNON:

Q —Plaintiffs' Exhibits 1, 2 and 3. On Exhibit 1, I want to refer to you in the first line where it refers to a "detention inmate."

On No. 2, in Paragraph d, "interview detention inmates"; and then No. 3, which is an amendment, as I understand it, we finally find the term, "inmate," alone and "detention" is left out.

This program of interviewing went into effect in April of 1971, is that right?

A That is correct.

[82] Q And the sole experience that you have had with it is from April '71 to the present time?

A Correct.

Q Now, Plaintiffs' Exhibits 1 and 2 refer to interviewing detention inmates. Is that what you mean, interviewing detention inmates?



A Well, the practice was to interview all inmates.

Q Well, it doesn't say that, does it, sir?

A It doesn't say that, but the fact is we interviewed all inmates.

Q Correctional as well as detention?

A Absolutely.

Q Do all the leaders of your penal institutions—did they understand that Plaintiffs' Exhibits 1 and 2, even though they made reference to "detention inmates," only, that it allowed interviews of those inmates that had been sentenced?

A Yes, because all interviews usually came through the central office to the office of public affairs.

Q What type of prisoners or inmates are we talking about, Mr. Malcolm, that you have up in New York City? What are they charged with?

A Anything from petty larceny to murder.

Q And that would be those that are in detention, would it not?

A That is correct.

[83] Q Now, you don't have anybody in the correctional institution that has been convicted of murder, do you?

A We have some convicted of manslaughter.

Q Manslaughter. What is the maximum period of time that a prisoner would serve in your correctional institution?

A Three years.

Q Three years?

A That is correct.

Q And if the term is in excess of three years, you send him some place else?

A He goes to a state institution.

Q Now, I gathered from what you said, Mr. Malcolm, that very few interviews have been refused.

Did you say that?

A I did say that.

Q At the same time, you said, if I remember correctly, very few have occurred?

A That is correct.

Q How many have occurred?

A We had about 13.

Q And how many have been refused?

A I can recall, I would say, less than five.

Q Now, who refused the five that you speak of?

A I refused them.

Q You did?

[84] Or my predecessor, Commissioner McGrath.

Q How many did you refuse and how many did he refuse?

A Well, I can say since I have been in office two months, I have turned down one interview.

Q So that he has turned down four?

A It could be four; it could be less. The number is very very small.

Q What was your reason for turning down the interview?

A The judge was picking a jury in this particular case and the judge asked me to delay it.

Q And your predecessor, what were his reasons for turning down the four or less that he turned down?

A I don't know.

Q Are there any standards that you have set forth in those regulations spelling out for the benefit of the press, so that the press will know when they may interview a prisoner and when they may not?

A Well, as a general, broad—

Q Would you answer my question, first, please? Are there any standards in any of your regulations that the press can look to to determine for itself whether or not you will or won't allow a particular interview?

A Well, it is difficult to say because we don't give this out to the press. This has been published in the newspaper. Not the order; this is an internal order.

[85] Q They are regulations, are they not?

A These are regulations.

Q They are public documents, are they not?

A That is right.

Q I gather from what you are saying, Mr. Malcolm,—so we need not pursue it—there are no standards in there, are there?

A Yes, sir.

**THE COURT:** The only standard is administrative feasibility.

**THE WITNESS:** The standard—

**MR. HANNON:** That is what I want him to say.

**THE WITNES:** The standard is one whereby the Commissioner, the Department of Correction can make a decision to refuse the interview; and it is based on the fact whether or not he determines at that particular time it is proper and appropriate, if it will affect the security of the institution, and good order; and it is based on that.

**BY MR. HANNON:**

**Q** Is that a major factor in your judgment, the security of the institution?

**A** Absolutely.

**Q** Of the 15 interviews that you say were conducted, how many of those were conducted with people that were in a correctional institution, that is to say, that were sentenced, [86] as contrasted to those that are detained?

**A** None have been conducted. We haven't had any requests.

**Q** For which?

**A** For the sentenced.

**Q** So no interviews have been conducted respecting anybody that is serving time in the New York City facility?

**A** That is right.

**Q** Again, Mr. Malcolm, so it is clear in my mind, a major factor in your judgment respecting whether an interview should be allowed or not is whether the interview is going to impair the security of the institution?

**A** Right.

**Q** Now, in your direct examination, Mr. Malcolm, you were talking about—I may be paraphrasing it—Big Wheels. You said you have your share of Big Wheels in your institutional system.

**A** If you want to use that term. That is not my term.

**Q** Let's use your term. What would your term for it be?

**A** Well, people who have been connected with fairly sensational cases.

Q What about the Big Wheel, if I may, within the institution, itself? Do you have some of those?

A You have people there who, as I said before, have been connected with sensational cases.

Q Do you from time to time transfer a man out of one [87] of your facilities into another because he is a trouble-maker?

A Oh, yes.

Q You do that?

A That happens.

Q Would you allow him to be interviewed by the press, Mr. Malcolm?

A It all depends on the circumstance.

Q You referred to Mr. Blyden and you referred to the Harlem 4 and you referred to the Pyle Brothers.

I gather from what you said, Mr. Malcolm, that these individuals are fairly well known in the New York City area?

A That is correct, they are.

Q Would you be of the opinion that the national news media has any interest in any one of them?

A I really don't know. I can say in the case of Mr. Blyden that news media from out of town came to interview him.

Q From his home town?

A Oh, I don't know what his home town is.

Q CBS hasn't been knocking on your door to talk to these people, has it?

A All the news media—

THE COURT: I don't understand what you are getting at.

MR. HANNON: I will withdraw the question.

[88] THE COURT: News Week Magazine wanted to interview him, according to this exhibit. Also, the New York Times. Both of them have some national circulation.

Time and Life has some national circulation, as I understand it.

I don't understand what your point is.

MR. HANNON: I have asked the question; he has answered it. I am satisfied.

THE COURT: Very well.

MR. HANNON: I have no further questions.

MR. WILSON: I have a few, Your Honor.

### REDIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Malcolm, of the prisoners in your facilities, which would you say, based on your experience, are the most difficult, the detainees or those under sentence?

A The detainees, no question about it.

Q You mentioned the Harlem 4 in your testimony. They are detainees; is that correct?

A They are detainees.

Q How long have they been in detention?

THE COURT: That is a euphemism in their case.

THE WITNESS: Eight years.

BY MR. WILSON:

Q Mr. Malcolm, do you reserve the final authority in [89] terms of granting or denying press interviews?

A I do.

Q Under what circumstances in an emergency situation would you say a denial would be justified?

A When the interview—

THE COURT: Now, is that issue before me? As I understood it, there was no contention here by anybody that this was a request for interviews in an emergency condition.

MR. WILSON: No Your Honor. It was raised on cross-examination.

THE COURT: I am trying to look at the lawsuit. As I understand it, this lawsuit has nothing to do with interviews in emergency conditions. Isn't that right? So what difference does it make what they would do in emergency conditions?

MR. WILSON: It may depend on the definition of the strike, Your Honor.

THE COURT: There is no request for an interview during a strike here. The strike is over. Mr. Carlson

has told the public that the strike is over; and the testimony before me is that it is over.

I understand we are not concerned with the difficult problem of riot or fire or inflammatory conditions within a prison at a particular moment. Now, if I am wrong about that, I want to be corrected. I don't understand that that is what has been challenged. In fact, all of your papers were presented [90] to me on the basis that this was not that kind of situation.

MR. WILSON: As far as that is concerned, that is correct, Your Honor.

BY MR. WILSON:

Q Mr. Malcolm, you said security would be a chief consideration in terms of press interviews.

A Yes, that would be the main consideration.

Q Do you feel allowing press interviews in any way aids your security problems?

A Would you repeat that?

Q Do you feel that allowing the press to have access to your inmates helps you in any way in your security problems?

A Yes, we feel that.

Q In what way, sir?

A In that it begins to expose conditions that are in the institution, so everybody can find out exactly what is going on, rather than keeping them under cover.

MR. WILSON: Thank you, Mr. Malcolm.

THE COURT: Thank you very much, Mr. Malcolm.

(Witness excused.)

MR. WILSON: Mr. Leroy Anderson.

WHEREUPON—

LEROY ANDERSON

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

[91] DIRECT EXAMINATION

BY MR. WILSON:

Q Sir, would you state your name and address for the record, please?



A Leroy Anderson, 7413 Keystone Lane, Forestville, Maryland.

Q Mr. Anderson, where are you employed and in what capacity?

A At the D.C. Department of Corrections, as Executive Assistant to the Director.

Q How long have you been employed by the District of Columbia Department of Corrections?

A Nearly two years.

Q Have you held any other positions during that time?

A Yes, I previously have been a Sepecial Assistant to the Director and Public Information Officer.

Q Would you describe briefly for the Court your present duties and responsibilities as Executive Assistant to the Director?

A Essentially, it is to assure the Director of smooth liaison with other District agencies, the District Building, the Hill. I serve as office manager and the coordinator between the Director's office and the principal operating and administrative components of the Department.

Q Mr. Anderson, what are the facilities that are under [92] the jurisdiction of your department?

A We have five main facilities: The D.C. Jail, the Women's Detention Center, the Lorton Correctional Complex, which includes minimum security and the Lorton Youth Center. In addition, we have 13 community treatment centers.

Q Which of those facilities are for sentenced prisoners?

A The Correctional Complex, the Women's Detention Center, the Youth Center, and the community treatment centers.

Q Are there any sentenced prisoners at D.C. Jail?

A Yes.

Q Approximately what percentage of the population?

A At varying times between 10 and 15 per cent.

Q What is the current population of the Lorton Complex that you described?

A The Lorton Complex, exclusive of minimum security, currently has a population slightly in excess of 1900.

Q What is the current population of D.C. Jail?

A Approximately 1200.

Q What is the range of crimes?

THE COURT: You know you, perhaps with some appropriateness, can assume the Court has some knowledge of this. I send people to each of these institutions every week.

MR. WILSON: Yes, Your Honor.

THE COURT: I don't want to stop you from making a record but I think it is fairly clear that these institutions [93] cover a wide variety of offenses that are not under Title 18 of the Code.

MR. WILSON: I ask that these documents be marked as Plaintiffs' Exhibits 5 through 8, for identification.

THE DEPUTY CLERK: Plaintiffs' Exhibits 5 through 8 marked for identification.

(Whereupon, D.C. Corrections Department Order 1300.3B, dated January 24, 1972 was marked Plaintiffs' Exhibit No. 5, for identification.)

(Whereupon, D.C. Corrections Department Order 1300.3A, dated April 2, 1971 was marked Plaintiffs' Exhibit No. 6, for identification.)

(Whereupon, D.C. Corrections Department document 1300.3, dated November 2, 1966 was marked Plaintiffs' Exhibit No. 7, for identification.)

(Whereupon, D.C. Corrections Department document 1300.1, dated August 10, 1956 was marked Plaintiffs' Exhibit No. 8, for identification.)

[94] BY MR. WILSON:

Q Mr. Anderson, I show you Plaintiffs' Exhibit Nos. 5 through 8, marked for identification, and ask if you can identify them?

A Exhibit 5 is a proposed department order to supplement the existing department order on public and news media relations.

Exhibit 6 is the current order on this subject.

Exhibit—is that No. 1 or 7?

Q It is No. 7.

A Exhibits 7 and 8 are previous department orders which were rescinded by Exhibit 6.

Q I ask you to look at Exhibit 5, again. It is dated January 24, 1972.

Do you still say that is a proposed policy?

A Yes.

Q That is a proposed policy. Sir, did you have any role in drafting any of those documents?

A I wrote Exhibits 5 and 6.

Q Do those reflect the policies of your department on the question of press access to your facilities from the period 1956 to the present?

A They do.

MR. WILSON: Your Honor, I offer those exhibits in evidence.

THE COURT: They may be received.

[95] (Whereupon, Plaintiffs Exhibits Nos. 5, 6, 7 and 8 were received in evidence.)

BY MR. WILSON:

Q Mr. Anderson, what was the policy in effect when you joined the Department of Corrections?

A The policy that was in effect at that time was virtually identical to the current department order on public and press relations.

Q What did the written directive that was in effect, Plaintiffs' Exhibit No. 7, show the policy to be?

THE COURT: That speaks for itself, doesn't it?

THE WITNESS: Yes, I would have to rapidly look over it again. My memory is dim on it. But it was a rather—

BY MR. WILSON:

Q Does it not prohibit individual interviews by the press with inmates?

A I don't recall if it did. My recollection is dim on it.

Q Would you examine it?

A Yes, it did not permit—

THE COURT: That is in "d."

THE WITNESS: Yes, sir.

BY MR. WILSON:

Q What was the practice when you joined the department [96] in 1970?

A We did permit interviews with inmates.

Q Were there any written procedures, policies or guidelines for such interviews at that time in 1970?

A No.

Q Now, describe briefly the current policy. Under what conditions may a newsman interview inmates in the facilities under the jurisdiction of your department?

A We make two distinctions: One, a formal request for an interview with an individual inmate, our policy requires that it be in writing to the Director, who would make a decision to permit the interview or to decline the interview.

We distinguish that from the more casual kind of interview that would involve members of the media at an institution for any of a variety of reasons talking to inmates collectively or individually.

Q Now, with respect to the former, those where written requests are made—

A Yes.

Q —is the consent of the inmate required?

A Yes, it is.

Q Where can the interviews take place?

A Anywhere.

Q Need there be a staff supervision or escort for such interviews?

[97] A Escort perhaps but not supervision.

Q Not supervision?

A Yes.

Q What do you mean by that distinction?

A If, for example, the interview were to take place in the visiting hall, the inmate would be escorted to the visiting hall, but the escort would not monitor nor take part in the interview.

Q May the name of the prisoner, of the inmate be used by the reporter?

A With the inmate's permission, yes.

THE COURT: You set up ground rules for each interview, don't you? That is what this says.

THE WITNESS: Yes, the ground rules would be between a superintendent and the inquiring member of the media.

THE COURT: Yes. And what do you mean by that, what they can talk about and what they can print?

THE WITNESS: No, sir, what we mean by that is basically conditions under which an interview is to be conducted, the length of time—

THE COURT: What about the subject matter?

THE WITNESS: No, sir, we don't make—

THE COURT: Nothing on the subject matter?

THE WITNESS: No.

THE COURT: So by, ground rules, you mean where and [98] how long the man is available?

THE WITNESS: Yes.

THE COURT: Time and things like that?

THE WITNESS: Yes, sir.

BY MR. WILSON:

Q Do the practices and policies you described apply to all men and women confined to the facilities under your jurisdiction?

A Only to those serving sentences.

Q Why is the distinction drawn between those serving sentences and those in detention?

A Primarily because it is our position that those in detention are essentially wards of the courts and we provide only housing for the inmate. So we don't feel that we could make a decision unilaterally involving inmates in detention.

Q Have you encountered any problems or difficulties with respect to the form of press access that we are talking about?

A No.

Q Interviews with individual inmates?

A No.

Q None at all?

A Not in terms of formal interview. We have had some minor problems with the volume of press interest on a given situation, but no specific problems with a formal interview.

[99] Q Are any changes contemplated in policy as stated in the documents that have been placed in evidence?

A Yes, and they are spelled out in Exhibit 5, I believe. We will broaden the order so that the matter of facilitating the interview will be easier. They can deal more directly with the superintendent; they can make a call at the institution during normal business hours; and upon presenting an acceptable identification be admitted to the institution.

Q How does that change the current policy?

A Well, insofar as an interview is concerned, the request must go to the Director in writing. This will not be true any longer. We will still continue to protect the right of the inmate to anonymity. It puts the decision at the lowest possible responsible level, essentially.

THE COURT: Do these rules apply to sentenced prisoners or prisoners being held pending trial or sentence?

THE WITNESS: Only sentenced prisoners.

THE COURT: Only sentenced prisoners?

THE WITNESS: Yes, sir.

BY MR. WILSON:

Q Based on your experience in the department, how frequently have requests been made to interview individual inmates under these policies?

A To the best of my knowledge, three times.

Q Only three requests for interviews of individual [100] inmates?

A Yes.

Q Are there other forms of press access that you allow, apart from interviews with individual inmates?

A Yes. We encourage press coverage of programs, the institution, per se; we react to breaking news events; we restrict news coverage or the presence of the media members in emergency situations. Generally, we have a very flexible attitude about it.

Q Does your department consider a strike an emergency situation?

A Yes.



Q How frequently do you get other types of requests, other than for interviews, for press access on an average?

A It is very difficult to say because the department has been in the news for a long time and for many reasons during the past year. If I had to give you some kind of average, I might say once a week.

Q Approximately once a week. Are inmates allowed access to the press in the sense that they can initiate a contact with the press?

A Yes.

Q Mr. Anderson, based on your experience, what have been the benefits of your policy of permitting interviews with individual inmates?

[101] A Well, essentially, the greatest benefit, in my judgment, is the extension of what the department is trying to do in terms of having broadly-based community programs. That is, by introducing and making as free as reasonably possible the access to the news media, we have introduced another natural, normal kind of element that we could expect people in the free society to have, no greater nor any less. Perhaps under some circumstances somewhat less.

We feel that the media, itself, because of this kind of exposure, has become more aware of what has happened and has not happened in the correctional institutions in corrections, and has given the public a broader understanding in most cases of what our department is trying to do and what our needs are.

THE COURT: Well now, that surely hasn't come about because of three interviews.

THE WITNESS: No, sir. I thought the question was directed to the—

THE COURT: I think perhaps the question was very broad but, as a practical matter, the press has not taken advantage of the opportunity to interview here, so you really cannot say what the opportunity for interviewing has done, can you?

THE WITNESS: No, sir, I can't.

MR. WILSON: One moment, Your Honor.  
That is all, Your Honor.

[102]

## CROSS-EXAMINATION

BY MR. HANNON:

Q Mr. Anderson, you were asked to answer questions based upon your experience, sir.

Would you tell me what your experience is?

A I have been with the department two years, most of which time I was the principal officer charged with the responsibility of dealing with the media.

Q Dealing with the media?

A Yes, sir.

Q Two years?

Q Have you ever been in charge of operating the D.C. Jail?

A No, sir.

Q Have you ever been in charge of operating any of the women's detention facilities?

A No, sir.

Q Have you ever been in charge of operating Lorton?

A No, sir.

Q Have you ever held any job at any one of these penal institutions?

A No, sir.

Q Have you ever had an office in any one of these penal institutions?

[103] A No, sir.

Q Have you ever been inside one of these penal institutions to see how they really are?

A Yes, sir.

Q Pardon me?

A Yes, sir.

Q On a tour?

A By myself, many times.

Q Many times. Now, Mr. Anderson, let me ask you this, please: The prisoners that you are talking about that are serving time in the penal institutions in the District of Columbia area are sentenced in which courts?

A Sentenced in the Superior Court, in the United States District Court.

Q They come out of our courts right here in the District of Columbia, do they not?

A Yes, sir, most of them.

Q Okay. Then from time to time would you acknowledge sir, on the basis of your experience, that there is such a thing as a dangerous type of prisoner?

A Yes, sir.

Q Would you acknowledge, on the basis of your experience, that there is such a thing as an incorrigible type of prisoner?

A Yes, sir.

Q Would you acknowledge, on the basis of your experience, [104] that there are real trouble-makers that are in penal institutions?

A Yes, sir.

Q Would you tell Judge Gesell, sir, what the D.C. Department of Corrections does with the so-called dangerous, incorrigible, trouble-maker type prisoners that end up, for example, at Lorton?

THE COURT: You mean with respect to interviews?

MR. HANNON: No.

THE COURT: I know how the prison is run, Mr. Hannon.

MR. HANNON: I want to know what he does, when the D.C. system has a real trouble-maker or dangerous prisoner on its hands, Your Honor. I want him to tell this Court.

THE COURT: I know, but he can say it. I don't see what that has to do with my case. That has to do with an interesting question about whether you transfer people or put them in maximum security, and so forth.

What has that got to do with my case?

MR. HANNON: We are going to be talking about the type of prisoners that we deal with in Federal penal institutions as contrasted with the type of penal institutions that we are talking about here.

THE COURT: I think that is significant and, in a large part, it is a wholly different class of prisoners that you have in the Federal penitentiary, white-collar type of prisoners. Twenty per cent of them are automobile thieves in [105] the Federal penitentiary, 20 per cent. I imagine what this gentleman has is something like 40 per cent armed robbers.

MR. HANNON: I would imagine there would be the same amount, too. But Your Honor does accept as fact the testimony that these prisoners are transferred from Lorton into the Federal penal system?

THE COURT: Oh, yes.

MR. HANNON: Okay. Then he need not answer the question. Thank you.

THE COURT: Oh, yes, some of them are. Some of them are.

### REDIRECT EXAMINATION

BY MR. WILSON:

Q Mr. Anderson, who is the Director of the Department of Corrections?

A Kenneth L. Hardy.

Q Does he approve of the policies you have described today?

A Yes, he does.

MR. WILSON: Thank you.

That is all, Your Honor.

THE COURT: Mr. Hannon, I am not attempting to be involved in any dispute with you. There are very hardened criminals in the Federal penitentiary system. My only point is, according to the 1970 figures of the Federal prisoners, [106] 9.1 per cent are there for crimes of force, as opposed, for example, to 20 per cent for automobile theft, 11 per cent for narcotics and marijuana, and so forth—forgery, liquor laws, postal thefts, Selective Service and other things.

There is obviously a very serious hardened core of prisoners in the Federal penitentiary. But I was talking about the general mix. The general mix, I would think, on my experience—if I am wrong, I want your people to straighten me out about it—is less trouble-making group of prisoners as a whole in the Federal penitentiaries than there are in institutions such as Lorton.

MR. HANNON: We are not talking about the general mix, if Your Honor please. I can't remember, when I was in the criminal division, the names of the many many individuals that I convicted of crimes that were committed here in the District of Columbia. I can't re-

member the names of the judges that they were tried before. I dare say that Your Honor can't remember many of the prisoners that were convicted in your Court. We can't remember because we know that so far as the new media is concerned, by comparability, the news media doesn't show any more interest in those people after they are convicted then you and I would have insofar as having a reason to remember them. There is such a thing as a newsworthy inmate, and that is what we are talking about.

THE COURT: I understand that.

[107] MR. HANNON: In this case, and that is why I wanted it clear.

THE COURT: I see what you are talking about.

MR. HANNON: They send those people like the notorious—what is his name—Bryant, I think he was convicted in your Court.

THE COURT: I sent Mr. Billie Bryant to a Federal penitentiary.

MR. HANNON: For a good reason.

THE COURT: I am quite familiar with that. I was talking about the general mix of prisoners.

MR. HANNON: I think it is not relevant, really. I will agree, on the basis of the general mix, that there is a diversification. For example, you have got your draft evaders, you have got your robberies, and then you have got your car thefts. There is a mix in that sense and we would agree that they are not homogenized in the sense they are all the same.

THE COURT: I am sure some of the most hardened criminals in the country are resting in Federal penitentiaries. I have no dispute about that whatsoever. My comment was only about the mix. I didn't want to have a misunderstanding with you or your colleagues about it.

MR. HANNON: I didn't want Your Honor to misunderstand why we think the question is relevant and why we think it is important for Your Honor to bear it in mind.

[108] MR. CALIFANO: Your Honor, we have no further questions of this witness.

THE COURT: You are excused, thank you, sir.

MR. CALIFANO: We have no further witnesses, with the understanding that the Government is going to call Mr. Carlson. We have subpoenaed Mr. Carlson.

MR. HANNON: I don't have any understanding that I am going to call Mr. Carlson.

THE COURT: What he is saying, if you are not going to, he will. That is what he is saying.

What is the answer?

MR. HANNON: Well, I really don't have to answer it, Your Honor, but I will tell Your Honor.

THE COURT: I thought you would, because we are proceeding here somewhat informally in an effort to get at the information.

Would you rather put him on yourself because you know what he has to say?

MR. HANNON: I will put him on and I am sure Your Honor would be terribly disappointed in me if I didn't put him on. I am sure Your Honor has some questions.

THE COURT: I have a few. Mr. Carlson has been in my Court before and I am extremely impressed with what he is doing in the Federal system. I think it would be useful to have his testimony and I would much prefer to have it than [109] have a record closed without it. It is a matter of indifference to me as to who calls him.

MR. HANNON: Not to me. I will call him. Mr. Califano can rest.

THE COURT: Mr. Califano is giving you that opportunity.

MR. HANNON: I take it the Plaintiff has rested?

MR. CALIFANO: Yes.

THE COURT: Yes.

MR. HANNON: May I call, on behalf of the Government Mr. Procunier, please.

WHEREUPON—

#### RAYMOND K. PROCUNIER

was called as a witness by the Defendants, and after having been first duly sworn, was examined and testified as follows:



## DIRECT EXAMINATION

BY MR. HANNON:

Q Mr. Procunier, would you tell us your name, please, and spell your last name for the benefit of our Court Reporter?

A Raymond K. Procunier, P-R-O-C-U-N-I-E-R.

Q Mr. Procunier, where are you employed, please?

A I am Director of Corrections for the State of California.

Q And how long have you been employed in that capacity, sir?

[110] A Since May of 1967.

Q Now, would you tell us, if you please, your history insofar as it relates to penal institutions?

A I started in corrections in April 1948.

Q If you will slow down a little bit, our Reporter will be able to keep up with you, please.

THE COURT: She is pretty good; go right ahead.

THE WITNESS: I started as a correctional officer in the California Department of Corrections at the California Institution for men, a minimum security institution in Southern California, in April 1948, as sergeant lieutenant there and training officer for that facility, and transferred to Sacramento in 1956 as an Assistant Departmental Personnel Officer. From there I went to Utah for a year; during 1957-58 as Deputy Director, Personnel Management and Training; and then for six months, the last part of it, I was Director of Corrections in Utah, after they had some difficulty, and during the reorganization and revamping period; followed by return to California as Departmental Training Officer and Associate Superintendent for four years at the California Medical Facility, our psychiatric hospital in Bakersfield. Following that, I was the Superintendent for Inmate Classification in charge of all classification and transfers in the department; then Associate Superintendent of Custody and Superintendent—Associate Superintendent of Custody at the dual vocation institution, [111] minimum and maximum security institution for young

adult prisoners at Tracy; following that, as Superintendent. That brings it up to '67. From then to now, as the Director of Corrections.

Q Mr. Procunier, would you describe for His Honor what the California penal institutions consist of, please?

A We have 12 major institutions that handle all of the Superior Court commitments that are sent to state prison. We have a total prison population of women and men, and our civil narcotics addict program in California, where the men are committed and women are committed under civil commitments for the control of narcotics addiction, a total of about 20,000, approximately 20,000 people in prison, 21 to 22 thousand people on parole.

Q Twenty thousand in prison in California?

A Yes.

Q Approximately?

A Yes.

Q For what type of offenses, Mr. Procunier?

A For the whole range of felonies.

THE COURT: From petty larceny to murder?

THE WITNESS: Well, we have very few petty larcenies any more. Felonies.

BY MR. HANNON:

Q What kind of staff do you have?

A Seven thousand, approximately 7,000 members on the [112] staff.

Q Who runs each of these institutions?

A The warden or superintendent.

Q And how many would that be?

A Twelve.

Q Twelve. And you deal closely with them in the operations of the system in California?

A Yes, you bet.

Q Now, at one time, did the State of California allow interviews of prisoners by the news media?

A Yes, we still do, but we had a policy at one time unless there was some obvious reason why not that the individual interviews by name and number were allowed with the accredited press.

Q So that the newspaperman could make arrangements through your office to interview, face-to-face interview with prisoners?

A It wasn't necessarily through my office. He could make arrangements with the warden, superintendent or through my office.

Q Has that practice been discontinued?

A Yes.

Q Do you know or did you know an individual named George Jackson?

A I didn't know him personally.

[113] Q But you knew of him?

A Very well.

Q Was he confined in penal institutions in California?

A Yes.

Q Under your jurisdiction?

A Yes.

Q He is deceased, is he not?

A Yes.

Q Did Mr. George Jackson have anything to do with the judgment of your office to discontinue news media interviews of prisoners?

A Yes.

Q Now, would you tell Judge Gesell, please, the criminal history of George Jackson as you recall it?

A I can't tell you specifically, but it dates back to his early childhood of being involved with the law. He was doing time at the time of the involvement in the incidents that are now very notorious for armed robbery.

Q And he had a long criminal history, did he not?

A Yes.

Q He had been in and out of penal institutions in California?

A Yes.

Q At the time of his death, how old was he, do you remember?

[114] A I don't remember.

Q Approximately?

A Twenty-eight, twenty-nine, I don't know. It is just a guess on my part.

Q Now, when did—

THE COURT: Are you telling the Court, because of the Jackson incident, you have permanently discontinued any opportunity for interviewing by the press of 20,000 inmates—

THE WITNESS: No.

THE COURT: —for the future in your system?

THE WITNESS: No. I responded to the question, did his relationship with the press in individual interviews have anything to do with the change of policy. The answer is, yes.

THE COURT: The change of policy doesn't prohibit interviews?

THE WITNESS: No individual interviews upon request by the media are any longer allowed.

THE COURT: Specific interviews are no longer allowed? You have prohibited that throughout the system because of the Jackson situation?

THE WITNESS: No, that was one element in the decision. That was my response to the question.

THE COURT: I am really anxious to know not so much about Jackson as the reasons why you discontinued the practice.

MR. HANNON: Does Your Honor know Jackson?

[115] THE COURT: No, he was not a personal friend of mine. I read the papers like everybody else.

MR. HANNON: I am anxious that you know about him.

BY MR. HANNON:

Q So would you tell us, Mr. Procunier, about George Jackson, and what his history was in California?

A George Jackson was a relatively unknown outside the prison but well known inside the institution up until January 1969, when he was charged with the murder of—he, along with two others charged with the murder of a correctional officer at our California training facility at Soledad. Then from then on until August 21, the incident at San Quentin, in which he was killed, he became more and more notorious and as a result in part

of our policy for allowing interviews with individual inmates by the press.

Q What were the circumstances under which George Jackson was killed at San Quentin?

A By a method—it is in trial now, so we do not know for sure, but a gun was smuggled into San Quentin to him and he attempted to escape and was killed in the escape attempt.

Q Did he kill anybody in the effort to escape?

A Yes.

Q How many?

A There were three people, three staff members killed and two inmates killed, and three staff members wounded in the [116] circumstances surrounding the escape.

Q All right. Now, prior to his death, did the press in California have access to George Jackson?

A Yes.

Q And what kind of access did they have?

A Well, it was our policy at the time for accredited news media to hold individual interviews upon requests, and until we stopped that because of the burden of work and the problems we felt it was creating, he had access for a period of about six months there, almost unlimited access.

Q During the six-month period, can you recall, Mr. Procunier, how many interviews did he have with the press?

A From August of 1970 until June of 1971, we have recorded—and there may be many more—33 interviews with various media reporters.

Q And were these interviews that Jackson had with the press over the six-month period published in the newspapers?

A Yes, many of them.

Q Then did the penal institutions in California have free access to newspapers?

A With the exception of on rare occasions that some publications, issue-by-issue, but the answer, generally, is, yes to all what we call legitimate—

THE COURT: That is because of your policy. You could have stopped the papers from coming in, couldn't you?

[117] THE WITNESS: No.

THE COURT: You can't stop the newspapers?

THE WITNESS: No, we have a section in our Penal Code, enacted three years ago, that we cannot stop anything coming in unless issue-by-issue it was determined, it is our determination that it is inciting riot or people to violence. Anything that goes through the mail, we must allow in.

THE COURT: Oh, yes, but if you felt that Jackson's comments to the press were creating internal difficulties, you could have censored that, couldn't you?

THE WITNESS: It would have been impossible, sir, with the magnitude of the—

THE COURT: It would not have been administrative-ly possible?

THE WITNESS: Impossible, because the results of the interviews were in most all the publications that were coming in. They come in by the hundreds.

BY MR. HANNON:

Q Now, what the message, if you will, that George Jackson had that was being published in the press and being sent into your institutions, please?

A I can't say specifically. Generally, it was our opinion, after reviewing this, that the message was to the dissident type of inmates to not cooperate was the way to bring about change and to cooperate was to perpetuate the system [118] as he saw it; and it was destructive, in terms of management principles, a destructive message, in our opinion.

Q What did the interviews, in your judgment, Mr. Procunier, do to the image of George Jackson? Do you have an opinion on that?

A It magnified, in our opinion, a negative leadership role, influencing men throughout the department to adopt the same type of attitude.

Q Now, at about the time that this was going on, did you sense or discern any change in the disciplinary prob-



lems of the penal institutions in California with respect to inmates?

A We felt very strongly that this was the case.

Q Did you make a judgment, Mr. Procnier, as to what was the cause of the disciplinary problems that were now erupting?

A Yes.

Q What was the judgment?

A The judgment was that the results of interviews with George Jackson and other inmates who had similar attitudes was a part of the increase in problems in the department.

THE COURT: I don't want to cut Mr. Hannon off, but I am sitting here trying to find out what you did about it. What are your rules now?

THE WITNESS: We have changed it now. The interview policy with the media is almost identical with the Federal requirements. The only change that we made is this: We will [119] not allow an interview, a press interview or interview with the the media at their request by specific name and number. We haven't changed the accessibility of the institution and talking to inmates.

THE COURT: So, it is more or less like the Federal policy?

THE WITNESS: Almost identical to the Federal policy, with a few modifications. We changed from the open policy to what the Federals are doing now. We have some other changes, but they are minor.

BY MR. HANNON:

Q The significant change is that the press is no longer allowed to interview prisoners, as such?

A The significant change is that they still interview inmates. They interview or talk with them, or any way you want to put it, but they do not do it on their own initiative with specific inmates. I can expand on that, if you want me to, to make it clear.

Q Please do.

A For example, just recently, because of the interest in California in the death penalty, a reporter from one of the major newspapers in the State wanted to do a

story on the death penalty and he wanted to talk to some men who had had the death penalty commuted to life. Prior to that, he would have come in with several names of inmates he wanted to talk to and [120] he would have talked to them. Now we had each warden and superintendent give us the names of four, five men who would talk to him; and we gave him the list and said: Who do you want to talk to.

THE COURT: In other words, you made sure he wasn't talking to a trouble-maker?

THE WITNESS: I am sure they did. I didn't give them those instructions.

THE COURT: That was the general effort?

THE WITNESS: The general effort is to minimize publicizing the trouble-makers.

THE COURT: Right.

THE WITNESS: That is the general thrust of the thing.

THE COURT: Permitting interviews, otherwise?

THE WITNESS: Yes.

THE COURT: The Federal policy is flat. You understand the Federal policy is no interviews. The Federal policy prohibits interviews without qualification.

THE WITNESS: May I expand on this a little bit?

THE COURT: Yes, I want your help. You have had so much experience.

THE WITNESS: What I heard them talking about earlier, interviews or conversations, we don't distinguish between the two. If an accredited reporter wants to tour San Quentin or Folsom, or some place, and in the process of the tour, as he [121] is going around, he can hold conversations or interviews, or whatever he wants, with whatever inmates he wants to. He can't come in and say, I want to see Joe Doakes. We won't let him do that.

THE COURT: When he has that conversation, chat or interview, is it supervised or can he talk to him without any custodial or other person overhearing?

THE WITNESS: That would depend on the circumstances. This decision would be made on an individual basis. If I were walking through the yard with a news-

paperman and he wanted to talk to an inmate, it would depend on the inmate and the circumstances, whether I would step aside or not.

THE COURT: Right. On the other hand, if he is interested in a subject matter, such as the death penalty, you will permit some interviews there of selected people, not chosen necessarily by him; is that correct?

THE WITNESS: Not specifically. Not chosen by him under any circumstances, but we allow that type of conversation or interview.

THE COURT: That is unsupervised?

THE WITNESS: Yes, can be or can't be. We make that decision on an individual basis.

THE COURT: A wholly individual basis?

THE WITNESS: Yes.

THE COURT: Now I understand. Thank you.

[122] Mr. Hannon, you proceed the way you want.

BY MR. HANNON:

Q That is comparable, is it not, Mr. Procunier, to the group discussion that we spoke of here today, that we heard about, that occurred at Lewisburg?

A I don't know what occurred at Lewisburg.

Q Well, let me change it and ask, essentially, is there any difference between the arrangement that you allow, where you have a group interviewed by the press, and the random selection system which we have at Lewisburg, where we will pick out at random 15 or 20 inmates and allow the members of the press to interview them? Are they essentially the same?

A It is essentially the same as I heard the warden offered the reporter to do in the segregation area.

THE COURT: In other words, you don't permit individual interviews under any circumstances?

THE WITNESS: No, we do. I understood that in the segregation area the reporter was allowed to—

THE COURT: To see a group.

THE WITNESS: —walk down through, past the cells, and have a conversation with the inmates.

MR. HANNON: Yes, that is correct.

THE WITNESS: Where we would allow them to interview them in a group.

[123] BY MR. HANNON:

Q Now, would you allow a member of the news media to come in and talk to Manson, to interview Manson?

A No.

Q Or Sirhan Sirhan?

A No. Not in—no.

Q Now, did you make any judgment at all, Mr. Procnier, respecting what effect if any the press interview, such as was allowed with George Jackson, had upon the rehabilitative efforts of the institution with respect to that particular inmate?

A Yes. This was one of the major bases for the decision. There were two or three different factors. One was the disturbance that it causes in other people; and secondly, it is our chore to do two things, we feel; and that is, to house people securely that are sent to us, and secondly, to do everything we can within our power and within our resources to prepare them for return to society.

The first thing that happens, we found out over the years, collectively, that before a man makes any kind of a change, there must be a change in his attitude. If a man is encouraged by increased notoriety and this encourages others to pursue this same thing, their attitude is such that we can't deal with them in a constructive way. This was one of the major considerations in changing the policy.

Q Did you conclude that this type of interview did [124] encourage other prisoners to follow the way of George Jackson?

A Yes, we feel very strongly that that is true.

Q That impairs the institution's efforts to rehabilitate these people?

A And to deal with them in a constructive way, yes.

Q Now, the George Jackson that we are speaking of was one. Were there others that you can call to mind that the press had an interest in interviewing?

A Yes.

Q Would you name a couple of them for me, please?

A There was a man by the name of Drumgo and one by the name of Cluchette.

Q Who are they?

A They were the co-defendants in the same murder trial.

Q The Soledad Brothers?

A That is what they are euphemistically known as, yes.

Q Now—

THE COURT: Your prohibition of interviews affects all of your work release and industrial work programs, and release programs, all of that, all the way through the system?

THE WITNESS: Again, I want to emphasize, on an individual request basis. It doesn't prohibit that if the person were touring. It does on an individual request basis; it prohibits it with everyone.

THE COURT: No matter what their status is in the [125] correctional system?

THE WITNESS: Right.

MR. HANNON: May I have Your Honor's indulgence, please, sir.

I have no further questions of Mr. Procunier, Your Honor.

THE COURT: Are you going to have many? I know this gentleman wants to get away.

When does your plane go?

THE WITNESS: 5:45. I have plenty of time, now that I am on the stand. I don't think they will want to talk to me that long.

THE COURT: No, they won't. I think at this time we had better break until 1:45. It is a convenient point and I am sure you will get off and get back on schedule with the other judges.

THE WITNESS: I appreciate that, Your Honor.

THE COURT: 1:45, then. I have one brief arraignment at 1:45 and that is all. Then we will go ahead.

(Whereupon, at at 12:30 p.m., the hearing was recessed, pursuant to reconvening at 1:45 p.m. of the same day.)

## [126] AFTERNOON SESSION

(Whereupon, the hearing reconvened at 1:50 p.m.)

THE COURT: If you will return to the stand.

WHEREUPON—

RAYMOND K. PROCUNIER

resumed the witness stand and testified further as follows:

THE COURT: All right, Mr. Califano.

CROSS-EXAMINATION

BY MR. CALIFANO:

Q Mr. Procunier—is that it?

A No.

THE COURT: No, i-e-r.

BY MR. CALIFANO:

Q Mr. Procunier, you indicated that prior to the experience with George Jackson, you had a different policy than the one you have now at the prison in California; is that correct?

A Yes.

Q How long did you have that policy?

A It had been in effect for years. I can't tell you exactly the time. It was the whole time I was the Director and prior to that.

Q So at least from 1957?

THE COURT: Sixty-seven.

MR. CALIFANO: Sixty-seven, I am sorry.

[127] BY MR. CALIFANO:

Q Through some time after August of 1971?

A Yes.

Q Do you remember when you changed the policy?

A The latter part, the last week in August or the first part of September, I think it was.

Q And Jackson was killed in that month?

A In August.



Q Do you by any chance have the two policies, statements of those policies with you?

A No, I haven't.

Q Are they written down?

A Yes.

Q Was Jackson the most interviewed prisoner you had.

A No.

Q There was others who had more interviews over shorter periods of time?

A No. You asked two questions.

Q Right.

THE COURT: You have had some who were interviewed more on a longer period of time?

THE WITNESS: Yes.

BY MR. CALIFANO:

Q Over a longer period. Jackson, you said, was interviewed 33 times between August of 1970 and June of 1971?

[128] A Yes, at least.

Q At least, all right.

You indicated in your direct testimony that that created an administrative burden of some kind.

A Yes.

Q What was that burden?

A Well, we determined conservatively that one administrative burden is that when a man is in a lock-up status, to have him interviewed by the press or anyone else, it takes a half a man day for an interview.

Q For a half hour interview?

A Yes, or for an hour interview or for a 15-minute interview.

Q When you had your interview policy, where were prisoners interviewed?

A It depended upon the status of the inmate. If he were an inmate in a halfway house, outside the prison, it may be there. It may be on the street while he is on the job; or it may be, in a camp, it would be at the camp office or on the work crew. It would depend on the status of the inmate.

Q You recognize that 33 interviews over a ten-month period is less than one interview per week. Did you have anyone interviewed more often than that in comparable periods of time?

A No.

[129] Q Who would be the next most interviewed prisoner, or what kind?

A The next most interviewed, related to time, would be an inmate who was interviewed 66 times over a period of about 18 months, something like that.

Q Did you have a letter policy vis-a-vis communications with the press in California?

A I don't understand your question.

Q Are prisoners permitted to write letters to members of the press?

A Our policy—you are talking about mail policy, is that what you want to get to?

Q Mail policy, that is correct.

A Our mail policy in California varies among the institutions from the answer, no, to that question, to, yes, unrestricted. We deliberately do not have the same policy in each institution. We don't want Folsom to run like our narcotics hospital. Depending on the kind of inmate that the institution handles, the policy varies.

Q What is your letter policy, your mail policy at its most liberal vis-a-vis correspondence with the press?

A Well, it isn't only related to the press. The most liberal institution we have, they send letters on the same basis that you and I do.

Q Back?

[130] A They receive them on the same basis that you and I do.

Q With a prisoner in a prison that would be comparable to a medium security prison in the Federal system, in a prison of that kind in your system in California, what would be the letter writing policy between an inmate and the press?

A You will have to get specific by name of institution, because I leave it up to the warden-superintendent; but, generally, I can answer your question. Going out, it would be inspected and may or may not be read; and

coming back, it would be inspected and may or may not be read, depending upon the status of the institution. We have no institutions that handle only medium men, the same as the Feds. Within one institution, I want the freedom of the wardens so that they can have 100 per cent censorship with some inmates and no censorship with some inmates, depending upon the responsibilities they have demonstrated in their ability to handle mail problems.

Q Was Jackson permitted to write letters freely?

A What do you mean, freely?

Q Was George Jackson permitted to write to reporters?

A I don't understand what you mean by freely.

Q Was he permitted to write letters to reporters without censorship?

A No.

Q Or to friends without censorship?

A No.

[131] Q So his letters were read by the prison authorities before they went out?

A Yes. With the exception of mail to me or to an elected official in California, the Governor or the agency administrator, and at that time—we have changed it since that time, it has varied—we were allowing sealed letters to attorneys.

Q Sealed letters to attorneys at that time?

A Yes.

Q At that time you had a policy—correct me if I am wrong—where you could have an unsupervised interview with a prisoner if you were a reporter, with no prison official present, in the sense of being present within earshot, but you could not, if you were a prisoner, write a letter that would not be censored or at least read for censorship purposes to a reporter; is that correct?

A Correct. Under some circumstances.

Q But in the case of Jackson, as an example?

A Yes, I am sure that is true.

Q Do you remember by any chance when Mr. Jackson's book was published?

A About when it was, I do.

Q January of 1971?

A (Witness nods assent.)

Q Or shortly before then. Do you think that book had  
[132] anything to do with his becoming a Big Wheel in  
your prison?

A Yes.

Q Have you ever read that book?

A No.

Q It is a book of his letters.

A I am aware of what it is. I have had it reviewed  
to me. I have never read it.

Q From prison.

In your present interview policy, as I understand, a  
reporter may walk around the prison with one of your  
wardens and interview inmates while he is walking around  
the prison; is that correct?

A Yes, or with anyone else we designate, if we ap-  
prove him.

Q If you approve them. If you approve them, do you  
let them talk to them without supervision?

A It depends. I stated, it depends on the circum-  
stances. For clarification purposes, though, it is possible,  
certainly possible. It would be a—well, that is clear  
enough.

Q Do you believe that George Jackson was the major  
cause—that the publicity which attended George Jackson,  
while he was a prisoner, is the major cause of the prob-  
lems you have in the California prison system?

A The major cause? I don't know that.

THE COURT: I imagine that crime is the principal  
[133] problem.

THE WITNESS: The people we got in the prison  
are the principal problem.

MR. CALIFANO: Just one second.

THE COURT: What is in the Court's mind a bit  
here, of course, is a question that may have nothing to  
do with this hearing because the Court isn't sitting as a  
legislative body and has no responsibility for drawing reg-  
ulations. I have tried to follow a lot of the reforms and  
progress that has been made in California, and I am

somewhat aware of the responsibility of that prison system.

What you portray to me is a sort of flexible approach to this problem.

THE WITNESS: Yes.

THE COURT: Where the individual warden is given judgment, depending on the nature of the problem at the moment, perhaps even the character of the particular newspaperman, the prisoner involved, the circumstances, the whole thing.

THE WITNESS: May I comment here?

THE COURT: You may in a minute, after I put in focus my question a little more for you.

Here what I am confronted with is an absolute flat policy laid down from the highest authority that writes a total bar across all of the aspects of the Federal system, including work release, every other kind of furlough release, every other [134] kind of release.

I am wondering whether in your experience you feel that absolutes of that kind, as opposed to the flexible approach that you have taken in California, is the best approach to the problem of press relations and corrections generally?

THE WITNESS: I much prefer the flexible approach. However, the one rule that we have with no flexibility is the rule we are discussing about individual requests for interview; and this was put in after a great deal of agonizing because of the very thing you are talking about. The best way for prisons to run, in my opinion, is to allow the warden or the man in charge of each institution, who can better assess than any director or anyone else the conditions of his institution and the kinds of inmates or the condition of the inmate at the time, the type of person that wants to interview him, for what purpose, to make a subjective evaluation of the total thing. However, in order to correct the situation that was getting out of hand, in my opinion, after consulting with the wardens and my staff, time after time, to avoid putting in the very policy we have, because this disturbs me greatly, we had to go to this. Our relationship with the press has always been fine. I would prefer not to have this rule. But I

have not been able, with the group of people I have to deal with in California—there are none better, as far as I am concerned, and that is probably biased—to arrive at a solution to control the [135] problem that we have been discussing here without that arbitrary rule.

Do you understand what I am getting at? This came after a great deal of agonizing because we tried to have modified versions of it and it wouldn't work.

THE COURT: I can see from your explanation why you need it in San Quentin, or something of that kind.

THE WITNESS: Yes.

THE COURT: But do you not have facilities within your system that are minimum security?

THE WITNESS: Yes.

THE COURT: Perhaps first offenders?

THE WITNESS: Yes.

THE COURT: Non-violent.

THE WITNESS: Yes.

THE COURT: That type of prisoner.

THE WITNESS: Yes.

THE COURT: Why did you feel, because of the Jackson situation, which I understand, that that had to be imposed with respect to this other category of prisoner?

THE WITNESS: My counsel suggested to me that—

THE COURT: You mean your attorney?

THE WITNESS: Yes.

THE COURT: I want to be sure you are talking about a lawyer.

[136] THE WITNESS: My attorney suggested to me—we were thinking along the same lines you are suggesting—that I had to make it apply to everyone or I would not be allowed the prerogative that you suggest here. That is the only reason I have it across the board.

THE COURT: In other words, as a correctional matter, putting aside legal considerations, you would tend to want to make the non-interview thing selective also?

THE WITNESS: Yes, sir.

THE COURT: And it is because of legal considerations that you put it across the board?

THE WITNESS: Yes, sir.

MR. CALIFANO: You have asked my questions, the last part of it.



THE COURT: Is there anything further?

MR. HANNON: I have no further questions to ask.

THE COURT: Thank you, sir.

MR. HANNON: May he be excused, Your Honor?

THE COURT: Yes, certainly.

MR. HANNON: Thank you very much.

THE WITNESS: Thank you.

(Witness excused.)

MR. KATZ: Mr. Alldredge, please.

[137] WHEREUPON—

### NOAH L. ALLDREDGE

was called as a witness by the Defendants, and after having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. KATZ:

Q Mr. Alldredge, would you please state for the record your name and residence?

A Noah L. Alldredge, United States Penitentiary, Lewisburg, Pennsylvania.

Q What is your present position and title, please?

A Warden of the United States Penitentiary at Lewisburg.

Q For how long have you been a warden at Lewisburg, sir?

A Eighteen months.

Q I wonder if you would give His Honor, please, a resume of your previous experience in the correction field before you became warden?

A I started in the prison service, Your Honor, in May 1942, as a correctional officer. I transferred to the United States Medical Center at Springfield, Missouri, in 1953 as a lieutenant. I transferred to Texarkana, Texas Federal Correctional Institution as Captain in 1956. I transferred to El Reno, Oklahoma Federal Reformatory in 1957 as Captain. I transferred back to the United States Medical Center in 1959 as Captain.

[138] I came to the central office of the Bureau of Prisons, May, 1960, as Administrator of Correctional Services. I became Deputy Assistant Director of the Operations of the Federal Prison System two or three years later. In 1965, I returned to the United States Medical Center for Federal Prisons as Executive Associate Warden; and in September 1967, transferred to El Reno, Oklahoma, as Warden of that institution. August the 10th of 1970, I transferred to Lewisburg as Warden of that institution.

Q So you have continuously been with the Federal Bureau of Prisons since 1942?

A Except for World War II, I was in the service for 30 months.

Q Yes, sir. Since 1967, you have been a Chief Executive Officer of a Federal penal institution?

A Yes.

Q As Warden of Lewisburg, to whom do you report?

A To the Director of the Bureau of Prisons, Mr. Carlson.

Q I wonder if you might describe to the Court very briefly what type of institution Lewisburg is and what its various sub-installations are?

A Well, I am responsible, Your Honor, for three institutions: The penitentiary at Lewisburg, a minimum security farm camp consisting of 150 men located about one-half mile from the institution; and a 350-man minimum custody facility [139] located about 18 miles from the institution at Allenwood, Pennsylvania.

Q What is the total inmate population that you have under your supervision?

A It averages about 1850.

Q Are all of them sentenced prisoners?

A Sir?

Q Are they all sentenced prisoners?

A Yes, they are all sentenced prisoners unless when the Court will refer a person there for study, psychiatric study and recommendation, it would be 4208(b), or something like that.

Q What is the total number of staff that you have?

A 430.

Q What kind of institution is Lewisburg Penitentiary?

A It is a penitentiary; it is a walled penitentiary.

Q Is that medium security, maximum security?

A Lewisburg is classified as a medium security penitentiary.

Q Would you tell the Court what some of the offenses are for which you have people there serving sentences?

A Well, the men there have committed felonies ranging from stealing Government checks, interstate transportation of stolen securities, through and including murder, bank robbery. We have a large percentage of bank robbers. I can't give you a percentage but we have a large number of bank robbers.

[140] Q Is the prison open or closed to the public, the general public?

A It is closed.

Q Are you familiar with the policy of the Bureau of Prisons respecting contacts with inmates on the part of the media?

A Would you repeat that, please?

Q Are you familiar with the policy of the Bureau of Prisons respecting inmate contacts with members of the press and other news media?

A Yes, I am.

Q Are you familiar with the policy as it was revised this year?

A Yes, I am.

Q Have you continuously followed that policy?

A Yes, I have.

Q To what extent do you permit prisoners to talk with newsmen?

A Well, I interpret the policy, and I believe I am correct, that when a member of the press does visit the institution and wishes to tour the institution—and I always encourage them to do this—that if he wishes to talk to inmates that he may see on the compound or at work or whatever it might be, that, yes, he can talk to them.

Q For how long do these conversations generally go on?

[141] A Usually five minutes, or less; but it may be longer than five. Five or ten minutes. In my observation, it would be as long as five minutes or sometimes a little longer.

Q Do you permit interviews between members of the press and individual inmates?

A Not if there is—not specific named in advance inmates, no, sir.

Q So you distinguish between the formal interview and—

A Casual.

Q —a more casual type of conversation?

A Yes, I do.

Q In so doing, do you do this in reliance on the policy statement which was put out by the Bureau of Prisons to which you have referred?

A Yes.

Q On occasions when conversations have taken place between inmates and members of the news media, to the best of your knowledge, are these conversations monitored or listened to by a member of your staff?

A It is not our policy to monitor these visits, no. Ordinarily, if possible, I will have the same person or a very small group of individuals who do escort news media or other visiting visitors to the institution around about the institution and little or no attempt is made, as far as I know, I have, personally, never made any attempt to overhear the conversation [142] between the inmate and a member of the press or anyone else.

Q Now, Warden Alldredge, based upon your experience and background in the field of corrections, as you related it to the Court today, have you formed an opinion respecting whether or not newsmen should be permitted physical access to penal institutions for the purpose of conducting personal interviews with inmates?

A You are speaking here of inmates in private that they have named in advance?

Q Yes, sir.

A I have a very strong feeling or belief that this should not be done.

Q Would you tell the Court what that opinion is?

A Well, Your Honor, I think that the key is when a person is identified. I believe that this has a tendency—and it is an opinion and based on what experience I have had—to give him status he would not otherwise enjoy in the institution, and that most likely the person who would want to be interviewed or request an interview with the press would be a person who was seeking this kind of role. It is an opinion of mine that when you take this kind of interview and it becomes a published story, that this man would gain influence that he would not otherwise have within the institution, and that it would tend to create problems for the administration of that institution.

[143] THE COURT: Is that view a view you have if the reporter does not mention the name of the prisoner?

THE WITNESS: The name of the prison?

THE COURT: The prisoner. In other words, he says: I want to see John Smith, number so-and-so.

THE WITNESS: Yes, sir.

THE COURT: Under ground rules that he has a right to interview him but he will never mention John Smith's name.

Do you follow what I mean?

THE WITNESS: Yes, sir.

THE COURT: But he will use the information he gets for purposes of the story. Do you follow what I am talking about?

THE WITNESS: Yes, sir.

THE COURT: Do you feel that under those circumstances the same situation exists?

THE WITNESS: Yes, Your Honor, I do. I think that—

THE COURT: Then if that is so, why do you let these men write anything they want to to the press?

As you know, judges are among the favored communicants of prisoners, and while I would certainly agree with what has been said, that some letters are quite inarticulate and difficult, there are certainly some prisoners who

can sit down and write a most lucid, organized, detailed, perhaps somewhat legalistic and highly factual letter.

[144] THE WITNESS: Yes, sir.

THE COURT: Now, if people like that start writing to the press, signing their names, uncensored, and the press starts publishing those letters, my problem is to see why that type of communication is acceptable whereas if the same thing were said orally it would not be acceptable.

THE WITNESS: Your Honor—

THE COURT: Do you follow what I am talking about?

THE WITNESS: Yes, sir, I do.

THE COURT: I am not trying to disagree with you. I want your help.

THE WITNESS: I don't know whether I can or not, but I will try.

For years and through experience, we know that the prisoners have been able to write uncensored, sealed letters to judges, the Attorney General, the President of the United States, and numerous other officials; and in these letters, we know that they have been highly critical of the institution, they have been highly critical of their treatment and their program at the institution. They have been highly critical of the medical treatment, the entire gamut.

In my opinion, at least, it has proven rather strongly that a person writing a letter does not have the same impact as when this person is interviewed in the prison setting and identified to the inmate population, as you mentioned earlier [145] this morning, almost immediately by everybody in the institution.

THE COURT: They will know of the interview.

THE WITNESS: They know the interview is taking place and they know the story published would be regarding this individual and his attitude that he expressed toward the institution, good or bad.

THE COURT: If he says it all in the letter and the letter appears on the front page of the Washington Post, what about it? The Washington Post goes to your prison.



**THE WITNESS:** I can only state again my opinion that I do not believe it would have nearly the impact. For example, perhaps—

**THE COURT:** Is that because you feel that the attitude would be he wasn't important enough to have a newspaperman come to see him at the prison?

**THE WITNESS:** No, I think when an inmate is identified by the warden of the institution or identified by anyone of importance at the institution, for example, a Congressman comes in and wishes to see a certain person, he immediately gains something from this. If this is to be continued or if it was in a—

**THE COURT:** But the letter with his name and his photograph might well be on the front page of the Washington Post.

**THE WITNESS:** It very well might.

[146] **THE COURT:** And he would be identified in that regard.

**THE WITNESS:** He would certainly. This would have an impact, too. If his picture and a full-length story was put on the first page of the Washington Post, I agree with you.

**THE COURT:** But you permit that?

**THE WITNESS:** Yes, sir.

**THE COURT:** What I am trying to get at is, what is the rationale of the differentiation?

**THE WITNESS:** The degree of impact, I guess, because if—

**THE COURT:** The degree?

**THE WITNESS:** Yes, sir. I would like to say, it could be anyone. For example, a person who would be highly favorable to the institution might be the person interviewed, or some such person.

**THE COURT:** In spite of what you just said, I get letters favorable to the institution as well as unfavorable. I am sure some prisoners write favorable letters.

**THE WITNESS:** Yes, sir, they do. But, on the other hand, if it was a negative-type action in a personal interview, identifying a person by name, and this was published by name for this individual, I think it would have more impact in the institution than it would by letter.

THE COURT: In other words, a matter of degree?

THE WITNESS: Degree, yes, sir.

[147] THE COURT: Excuse me, Mr. Katz.

MR. KATZ: Yes, Your Honor.

BY MR. KATZ:

Q Warden Alldredge, how many prisoners at the present time do you have in your institution who are persons of considerable national interest?

A I am sure I can't name them all. I can't recall all, but I would guess at least ten or twelve at this time.

Q Would you name a few of them?

A Yes. Bobby Baker; of course, James Hoffa just went home. Martin Sweig, the Mayor of Newark, I can't recall his name.

Q Adanizio?

A General Turner. There are others. I can't recall the names offhand.

Q Has it been your experience with respect to some of these people that you have had a great deal of media interest in them?

A Yes.

Q How is this interest manifested?

A By telephone calls frequently requesting either a personal interview with the man or frequently wishing to do a documentary of his life, and in one instance a documentary regarding the political structure of a state and how it might have been built and how it did build.

[148] Q With respect to someone such as Mr. Hoffa, can you give us an estimate of the number of media contacts that you had in his case over this brief period of time?

A I would estimate, and it is only a guess, that as to Mr. Hoffa, I would be called a minimum of 150 times a year and sometimes maybe 200. In some instances I have been called at a particular time 50 times in one day regarding Mr. Hoffa from as far as England.

Q How does this compare with the media interest which is reflected in some of your other inmates not of the status of Mr. Hoffa?

A Well, naturally, there is a great difference. There is more interest in the person who is well known. And the other, usually the person of interest to news media then would be the person who has been involved in some kind of serious incident in the institution.

Q Would you foresee some effect upon discipline, possibly morale of your inmates if interviews were to be permitted and the result would be media contacts with different prisoners of a ratio such as that which you have related with respect to other types of media contacts in the past?

A You just about lost me, I am sorry.

THE COURT: He is just saying, if you permitted all of this, would it have created problems for you; and the answer is, obviously, it would. Fifty or sixty times a week, there [149] is nothing before me that suggests anybody was asking for anything of that kind.

BY MR. KATZ:

Q Are all the inmates permitted to write letters to media?

A Yes.

Q Are they presently being permitted to write letters to the media?

A Sir, restate that, please.

Q Are they presently, at the present time are all your inmates permitted to write to the press?

A Yes, yes.

THE COURT: In that connection, have you disseminated the policy that is in issue here to each of the prisoners by giving him a copy?

THE WITNESS: Your Honor, I know we placed it in each quarters because this is our policy.

THE COURT: You mean you posted it in each quarters?

THE WITNESS: Yes, sir, and actually I believe we put out 1500 copies of them.

THE COURT: Put them out to everybody?

THE WITNESS: Yes, sir, to everybody.

BY MR. KATZ:

Q And this correspondence goes out through the prisoners' mail box?

[150] A Yes, my secretary handles this sealed mail herself. It is picked up and brought to her.

Q Is any of this outgoing mail examined, read or inspected in any way?

A To attorneys or to news media, you mean?

Q To the news media?

A No, it is not. It is placed in a Government franked envelope with a letter from me wrapped around it, which states, in effect—I can't recall the exact wording—this letter has not been read, it has not been censored; and that if there is any information in it that they would wish to question me or the Director of the Bureau of Prisons about, please do so. Something to that effect.

Q The prisoner places his letter in an envelope—

THE COURT: It is handled just like judicial mail?

THE WITNESS: Precisely the same thing; and this is why I believe it is very acceptable to the inmate population.

BY MR. KATZ:

Q The prisoner seals his envelope and the sealed envelope is placed in the Government franked envelope that is sent outside?

A Yes.

Q Are members of the press being permitted to visit Lewisburg Penitentiary?

A Yes, sir.

[151] Q Are they presently being allowed to hold conversations with the inmates within the meaning of the policy statement as you have explained it?

A Yes, they are.

Q And you are presently operating normally as you would under the provisions of the policy statement?

A Yes, I am.

Q Do you know the Plaintiff in this case, Mr. Bagdikian?

A Yes, I do.

Q If you see him here in the courtroom, please point him out.

A I know Ben (indicating).

MR. KATZ: Let the record reflect that Warden Alldredge identified Mr. Bagdikian.

BY MR. KATZ:

Q How many times has Mr. Bagdikian visited Lewisburg?

A Since I have been there, twice.

Q Do you remember the dates of those visits?

A No, I do not.

Q Could you approximate the dates of the visits?

A I only remember really the month. He visited, you know, just a little while ago in March. I can't recall the date. I didn't think to even try to remember that. And the other time, I can't say really. It was—

Q Last year?

[152] A —within the last six months or the last three months. That is the best I can do.

Q At any time when Mr. Bagdikian visited Lewisburg, did he ever conduct a personal interview with an inmate?

A You mean personal, private, unsupervised interview?

Q Yes, sir.

A No, he did not.

Q Of these two visits, did one come after this litigation was filed?

A Yes.

Q And one at some time—

A Prior to.

Q —previous. Was Mr. Bagdikian treated in the same way on both occasions?

A I believe so.

Q Did Mr. Bagdikian interview you?

A Yes.

Q On one or both occasions?

A Both occasions.

Q Did you give Mr. Bagdikian your full cooperation on both occasions?

A I believe I did.

Q If a prisoner should want to obtain the assistance of a fellow inmate in composing a letter to the news media, is this permissible?

[153] A Yes.

Q After the policy statement, the February policy statement permitting correspondence with the media went into effect, did you notice a significant amount of such correspondence?

A Yes, sir.

Q Can you give us an estimate?

A I only counted one day, 88 went out one morning to various members of the press.

MR. KATZ: Would you indulge me a moment, Your Honor.

THE COURT: When a Congressman comes to Lewisburg and he says he wants to have a private conversation with an individual inmate, do you let him?

THE WITNESS: Yes, sir.

THE COURT: Why do you distinguish between him and Mr. Bagdikian?

THE WITNESS: Well, I mean, I am not very familiar with this area, Judge, but as I understand it and believe that the Congressman has control over the institutions, both in the legislative area, and a kind of supervisory role of the prison, itself. I mean, this is an opinion, not—

THE COURT: Well, if the Governor or the Lt. Governor of Pennsylvania comes, do you let him?

THE WITNESS: No, I would not.

THE COURT: It would just be a Federal official?

THE WITNESS: A Federal official. For example, any [154] judge, as you well know, or any United States Attorney in this area, yes.

THE COURT: I have always been permitted full interview privileges when I have gone to prisons.

THE WITNESS: Yes, sir.

THE COURT: I was wondering about Congressmen, particularly; and you permit them to have such interviews?

THE WITNESS: Yes, sir.



BY MR. KATZ:

Q Warden Alldredge, when Mr. Bagdikian visited Lewisburg recently, did you ever tell Mr. Bagdikian, when he held his group discussion conversation with the inmates, as he related earlier, that a member of the staff would have to be there and would listen to what was being said?

A No, I did not. In fact, I did tell Mr. Bagdikian I knew he would be wanting to talk to certain men as we walked around the compound, as he did tour the institution, and he would be able to discuss, you know, whatever he wished to with them.

I think Mr. Bagdikian would agree with me, when I personally went with him on his first tour, that I made no attempt to remain close to him and see that he could not, you know, talk privately with prisoners.

MR. KATZ: Thank you.

THE COURT: Do your prisoners have any outside contact [155] through a radio station or through a newspaper or anything of that kind?

THE WITNESS: You mean by appearing on it, Your Honor?

THE COURT: For instance, do they have a newspaper that is disseminated outside the prison?

THE WITNESS: We have our own.

THE COURT: I know you have a prison newspaper.

THE WITNESS: A prison newspaper.

THE COURT: Is that paper allowed to be disseminated outside of the prison?

THE WITNESS: It is not mailed. I think, only for economic reasons. At one time most of the institutions, the Federal institutions, and some Federal institutions now permit them to be mailed to their correspondents. We don't at Lewisburg and it is primarily for economy.

THE COURT: There is no prohibition?

THE WITNESS: No, sir.

THE COURT: So that they can write their own newspaper and send it out?

THE WITNESS: It is sent to all institutions; and, too, we have had the press in our institution quite frequently and we have a very active program of outside

people coming into the institution through other organizations.

THE COURT: Do many of your prisoners go out and talk to civic groups?

[156] THE WITNESS: They have, yes, sir.

BY MR. KATZ:

Q Are the prisoners permitted to receive newspapers and magazines?

A Yes, yes.

Q Are these censored in any way?

A They are not censored in any way. The Bureau regulations do permit the warden of an institution—if a magazine would be inflammatory, he must justify this in writing and make it a part of the record and send a copy of this to the Director of the Bureau of Prisons for, you know, whatever consideration he would give to the decision of the warden.

Q Are the prisoners permitted to watch television?

A Yes.

Q Is this without restriction?

A Yes.

MR. KATZ: Thank you.

Your witness.

## CROSS-EXAMINATION

BY MR. CALIFANO:

Q Warden Alldredge, you indicated, I think—I tried to write it down as you said it—that the key is—with respect to the problems that a warden has with interviews by newspaper reporters of any of his inmates, I think your words were, the key is when the person is identified and when it [157] becomes a public story. Is that correct?

A Generally the way I remember it, yes.

Q Why do you then not permit a reporter to interview a prisoner where he agrees not to identify his name?

A Well, I can only say that I believe that the prisoner is identified immediately throughout the institution by

the inmate group, and these are the people I am concerned with.

Q How is he identified, because he goes back to the inmates and says he talked to a reporter?

A Well—

THE COURT: You haven't been near many prisons.

THE WITNESS: That is the only thing I can say. If you came to the institution, everyone in that institution within five minutes would know there was a stranger who had walked up to the front door and requested to see something or somebody.

THE COURT: I dare say if Warden Alldredge went in to work with one shoe untied, it would be known all over the place before he got to his desk.

THE WITNESS: That is very true.

BY MR. CALIFANO:

Q You agree with the letter policy in the Bureau of Prisons statement, I take it?

A Yes, I do.

Q You have no problem with prisoners being identified as a result of the correspondence they write?

[158] A No.

Q To newspapers?

A I have no problem with this because we have not really had a problem in the many years that this has been done with Government officials and people outside our own agency.

Q You agree with the photograph policy in the Bureau of Prisons statement, the regulation?

A If you mean that the prisoner has a right not to be photographed, yes, I do.

Q Also that pictures can be taken by visiting press and if the prisoner agrees they can put his picture in the paper?

A I prefer to put it the other way, that he has a right not to be photographed if he doesn't want to.

Q If he is willing to be photographed, they can take his picture?

A Yes.

Q Put it in the newspaper?

A Yes.

Q And identify him in that picture?

A Yes.

Q That doesn't create the same kind of a problem that a personal interview does for you?

A It would not, as far as I am concerned, in my judgment.

Q I wish you could give me a reason why that is so. [159] I always thought a picture was worth a thousand words. Maybe that is not true in prisons.

Can you identify the reason why it is less difficult for you to deal with the man when his photograph is on the front page of the Post, or when his photograph is on the evening news on television that was taken by a reporter?

A There is a great deal of difference, and I don't know that I can explain it. There is a great deal of difference between a person having a photograph made which is a part of a letter, which would go out to a member of the press, than having that member of the press there in a person-to-person private interview with this particular inmate.

There is a great difference, and it does have an impact on the institution that the other would not have. This is the fact. I can't, you know, probably prove that.

Q The photographs don't have to go out in letters. Are you saying—

A No, they can be taken then or however they might photograph him.

Q Taken by a photographer?

A Yes, I believe Mr. Bagdikian's photographer took numerous pictures throughout the institution, including, of course, some of our worst quarters that I have at Lewisburg.

Q Did you have any trouble because of the stories that he wrote of your institution in the series he wrote? [160] A I did not read all of the articles.

Q About your institution?

A Mr. Bagdikian made very little reference to Lewisburg in his articles.

Q But the references there created no problems for you with your inmates?

A No, there was very little about Lewisburg.

Q You indicated that you had many requests for Bobby Baker. Have you had a lot of requests for him this past month or so?

A No, since my policy is well known.

Q So nobody calls?

A No, people will call. Particularly certain papers that would be interested in a given person for certain reasons, they call, and they don't call back very often. They accept the policy.

Q How many times have you been called about him in the last month?

A About Bobby Baker? None, or none to my knowledge. I will put it that way. Somebody else might have been called.

Q What about Martin Sweig? Have you had a lot of calls about him?

A No.

Q Have you had a lot of calls about General Turner?

A Not for quite some time.

[161] Q How about Mayor Adanizio, the man whose name you could not think of?

A You know who I mean?

Q Yes.

A I had several calls about him at the very beginning, wanting to do certain stories.

Q Right after he arrived?

A Well, for a period of—I can't say how long.

Q In the last—

A In the last month, I have had none.

Q How many reporters have requested interviews with the members of the negotiating committee at Lewisburg during the past strike?

A How many?

Q Yes.

A One.

Q Is that Mr. Bagdikian?

A Yes, Mr. Bagdikian.

Q Do you see any distinction in terms of the notoriety problem of a Bobby Baker or a Jimmy Hoffa, shall we say, when they first arrive, and a reporter requesting an interview about something that is going on in your prison or has gone on in your prison?

A I would have been very concerned and most reluctant, and would have believed and believe personally that, in my [162] judgment, this would have created and could very easily have created a much more dangerous situation than I did have if Mr. Bagdikian had been permitted to interview these men privately and use them for news reasons.

Q If he had been able to interview any of them privately?

A Privately and specifically by name, yes.

Q Right. If he had been able to interview them as a group, would that have presented the same problem to you?

A Yes, it would have.

Q Suppose one of the names came up on the random selection?

A He would have had that opportunity, yes.

Q That wouldn't have concerned you?

A Yes, it would have concerned me, yes.

Q What is the difference? Is the difference that the shot is a 150-to-1 that they won't come up in random selection, rather than giving him one of them to talk to?

A Precisely.

Q Do you feel that it is an institutional emergency at Lewisburg now?

A No, as far as the work stoppage, no.

Q No. Do you ordinarily permit private, unsupervised interviews of virtually unlimited length or varying length at the discretion of the reporter of groups of prisoners as you did Mr. Bagdikian?

[163] A You mean on random selection? I have done this before.

Q You have?

A Yes.

Q How often do you do that?



A Maybe two other occasions since I have been at Lewisburg.

Q You have been at Lewisburg how long?

A Eighteen months.

Q Do you remember what those occasions were?

A No, I don't even recall for sure that they were members of the news media. It might have been someone else who had an interest in corrections that wished to speak to a group of inmates and we selected a group for them to speak to.

Q Do you remember ever doing that before for a member of the news media?

A I can't say that I do.

Q Did you check with Mr. Sarlson before you did this or after you did it or while you were doing it, to seek his approval?

A I told Mr. Carlson—I cannot recall whether it was before or after—that I planned on offering Mr. Bagdikian the opportunity to talk to, in a sense, an unknown group of prisoners that would be randomly selected, yes. I don't recall whether it was before or after.

Q The directive indicates that he is the one with [164] authority to make exceptions. Has he delegated that authority to you, exceptions to this regulation?

A My interpretation of the policy is that a group of inmates who are not identified speaking to a newspaper reporter is within the purview of the policy; that it would be proper because it is a conversation and they are not identified in the article as written later. Just a give-and-take conversation of a few minutes with a reporter.

Q Maybe you can enlighten us on that. You say you consider that a conversation, as distinguished from an interview?

A Well, I think it is just semantics, the matter of interview as opposed to conversation. I think they are very similar.

Q Could you tell me the difference?

A To me, the difference between an interview and conversation?

Q Yes, between a conversation and an interview?

A My distinction, frankly, is that of identifying them in advance by the reporter, as to who he wished to speak to in private.

THE COURT: I take it there is an element of time, too?

THE WITNESS: Yes, sir.

THE COURT: The phrase the Plaintiff used is, "interview in depth," which I take it is something that involves an [165] hour or two hours, as opposed to five or ten minutes chat in the yard.

It seems to me those are the two things that emerged from the testimony. Many of us would think anything was an interview when a newspaperman was involved. From the newspaperman's point of view, he is talking about a discussion in depth.

Isn't that what you are talking about, Mr. Califano, in your papers, when you talk about an interview? You are talking about a chance to really explore with a man in private in detail, aren't you? Isn't that what your feeling is about it?

MR. CALIFANO: Yes, that is correct.

THE COURT: It doesn't make any difference whether you call the other an interview or chat or conversation; from your point of view, it is not an interview, as I understand it.

MR. CALIFANO: What I am trying to discover is the prohibition against interview and how the Warden interprets the regulation; and I think I have an understanding of it now.

BY MR. CALIFANO:

Q Identification, in your mind, is the key?

A Strong point.

Q The identification of the prisoner. Did you explain to Mr. Bagdikian what conversations about institutional facilities programs and activities meant when you talked to him?

A Yes.

Q What did you tell him?

[166] A In general, we covered this part of the policy statement. I offered Mr. Bagdikian a copy of it; and he

did not wish to take it because he said he was familiar with the policy statement.

Then we discussed the paragraph relating to facilities, programs and activities; and he brought out about the work stoppage being an activity; and I said, in effect—I can't recall precisely my words then—regarding this not being a regularly-scheduled activity of the institution; but that he and I both knew that he would be talking to inmates about the work stoppage if he toured the institution, as I had asked him to do.

In fact, I think the words were: You will walk out this room, the first inmate that you see, you will be talking to him, if you wish, and I am sure that he will discuss with you the work stoppage.

Q But, as you ordinarily interpret "activities," that wouldn't fall into it, as you interpret it?

A It just so happens, as I interpreted it, the work stoppage would be a past activity of the institution and even though I would not encourage any reporter to talk about it, I am sure that they would.

Q Could you explain to me why it would be seriously disruptive for Mr. Bagdikian to interview privately a half dozen or so inmates of his choosing who are not public figures?

[167] MR. HANNON: I object to the question because I don't believe the witness has testified that it would be seriously disruptive. He is putting something in that the witness hasn't testified to.

THE COURT: Disruptive, not seriously, but disruptive.

MR. HANNON: He said seriously disruptive.

THE COURT: Well, leave out the "seriously."

BY MR. CALIFANO:

Q Disruptive? Leave out the seriously.

A Restate your question, please.

Q Could you explain to me why it would be disruptive and precisely how at Lewisburg for Mr. Bagdikian to interview, say, a half dozen or so inmates who were on the negotiating committee or otherwise involved in more than a passive way in the strike?

A Well—

Q Today, tomorrow?

A May I explain it? I may not explain it to your satisfaction, but in my judgment, the fact that he would be interviewing men who were the leaders, they would be the leaders of this work stoppage, and the men who negotiated with the institution, if they had recognized myself as being permitted to negotiate with them, if he had interviewed these individuals, I think it would have had a tendency in the institution to have either re-ignited the work stoppage or caused [168] other difficulties for the institution.

Q On what do you base that, Warden Alldredge?

A Experience is all. I can't say that it would have happened. I can just say, in my judgment, I think it would have endangered the institution.

Q Have you had work stoppages before in Lewisburg?

A Yes.

Q Have reporters interviewed people involved in them?

A They didn't in this first instance, no, nor in the second instance either.

Q How many have you had, one before this one?

A At Lewisburg, yes.

Q When was that?

A I arrived in Lewisburg August the 10th, and—

Q August 10 of what year?

A —1970, and August the 15th, 1970, I believe that there was a work stoppage similar to this one.

Q As long as this one?

A No; no.

Q How long was it?

A It lasted something like two days, three days—maybe two days, I think.

Q Did reporters come in after that work stoppage and interview people?

A To the best of my knowledge, no one asked.

[169] Q No one asked.

Am I clear that whomever a reporter interviews at your prison, as you understand these regulations, provided it is not someone he requested to interview in ad-

vance, he may talk to him privately outside the earshot of any staff official at the prison?

A As he goes through the institution, yes.

Q If in going through the institution he meets a prisoner he wants to talk to for more than five minutes or more than three or four questions—you said five minutes or less—will you permit him to do that?

A Routinely, I would walk away from the person who is touring the institution, if he indicates some desire to talk to an individual. Yes, I would let him have this privilege. I have done it many times.

Q You would. So if Mr. Bagdikian went to Lewisburg tomorrow, for example, and he wanted to interview a prisoner for 15 minutes or half an hour, alone, out of earshot of any member of your staff, provided he did not ask for his name in advance, you would let him do that?

A No, I would not. We were talking—

Q As he was walking through?

A Five or ten minutes as he was walking through the institution.

Q Only five minutes. I said five or ten.

[170] THE COURT: If he bumped into him.

BY MR. CALIFANO:

Q If he bumped into him?

A Actually, if he stopped and talked to every man that he met for 30 minutes, it would be a very difficult thing for me to tour the institution with him.

Q Have you ever thought, Warden Alldredge, about any less restrictive means of handling press interviews than the ones that are now in the Bureau of Prison's policy statement?

MR. HANNON: I object to the question, your Honor.

THE COURT: Sustained.

MR. CALIFANO: One second.

BY MR. CALIFANO:

Q You said that the difference between an interview and a conversation was also the length of time involved?

A I can only say I have interpreted it to be a five- or ten-minute casual contact as the man tours the institution.

Q Do you know how long Mr. Bagdikian talked to the prisoners?

A I think approximately—he started with ten men and it was less than an hour.

Q About 45 minutes?

A Yes. I considered that he was talking to ten people.

Q So you consider that a conversation?

A Yes.

[171] Q The larger the number of people, the longer it can be and still be a conversation?

A Well—

THE COURT: I think we are just getting altogether too argumentative, Mr. Califano. You have lost track of your pleadings to some extent.

This gentleman has given you a generalized interpretation of the regulation. He didn't draw it. He works with somebody else.

MR. CALIFANO: Fine.

THE COURT: I think we ought to move on.

MR. CALIFANO: That is all.

MR. KATZ: No redirect, Your Honor.

THE COURT: All right, thank you, Warden.

THE WITNESS: Thank you.

(Witness excused.)

MR. KATZ: Mr. Norton, please.

THE COURT: How many more witnesses do you have?

MR. KATZ: We have two more, Your Honor, Mr. Norton and Mr. Carlson.

THE COURT: Very well.



WHEREUPON—

JOHN J. NORTON

was called as a witness by the Defendants, and after having been first duly sworn, was examined and testified as follows:

[172] DIRECT EXAMINATION

BY MR. KATZ:

Q Would you state your name and address, please?

A John J. Norton, 33 Pembroke Road, Danbury, Connecticut.

Q Are you employed by the United States Bureau of Prisons?

A Yes.

Q What is your official title?

A I am Warden of the Federal correctional institution at Danbury, Connecticut.

Q For how long have you been the Warden at Danbury?

A About two and a half years.

Q Would you just briefly recapitulate your experience prior to that in the field of corrections?

A Well, I started as a correctional officer at Englewood, Colorado—these are all Federal institutions—and—

Q What year was that?

A 1947, May 1947. I transferred into the parole office at Englewood in approximately 1954. I went to Ashland later that year or early '55 as a parole officer. In '56, I went to El Reno, Oklahoma, as Chief of Classification and Parole. In '58, I went to Petersburg as Associate Warden; back to Ashland as Warden in '60. I went to Sandstone, Minnesota as Warden in '65; and Danbury in the fall of '69.

Q So you have been the warden of one institution or [173] another for over ten years?

A Yes.

Q Would you give us a brief capsule description of the type of institution you have at Danbury?

A Well, we are a Federal correctional institution, which is actually a classification of, generally, repeaters. We have very few—although, I will contradict myself as I go along. With the exception of such types as Selective Service, and whatnot, most of our men have been involved in offenses of one kind or another many times. Generally speaking, they are not the aggressive penitentiary type and are not serving lengthy sentences, by and large, under five years. However, with our present-type population, there is a good deal of overlapping and it is very difficult to make a clear-cut classification in Federal correctional institutions as there once was.

Normally, I think it would call for 24 years on up, but we do have quite a few kids under 24.

Q What is the total inmate population at the present time?

A Approximately 730, 734.

Q How many members of staff do you have?

A About 180 full time and we have some part time.

Q Is your institution open to visitation by the public generally?

A Generally is a pretty broad word, but, yes, we have [174] certainly quite—

Can I double back a little?

Q Yes.

A We are a correctional institution, so there is no out-and-out freedom, but we have many many visitors coming and going, programs, and particularly in our narcotics unit.

Q But a member of the public generally having no particularized business cannot just come in?

A That is correct.

Q Are you familiar with the policy of the Bureau of Prisons governing contact between inmates of your institution and the news media?

A Yes.

Q And you are familiar with that policy as it was changed in February of this year?

A Yes.

Q To what extent do you permit contacts between, physical contacts between the media and your prisoners?

A Well, as has been said many times here today, we try very very hard to encourage total tours of the institution, to see the entire institution.

Should I go through this contact?

THE COURT: Is it fair to say, Warden Norton, that your view of the matter is much the same as Warden Alldredge's?

THE WITNESS: Much the same. I think all of us are [175] still working at the distinction between conversation and interview; and mine, frankly, was two-minute duration as distinguished from five or ten. But I think as we go along, we are going to be more flexible.

BY MR. KATZ:

Q On what basis do you distinguish between an interview, as that term is described in the regulations, and other physical contacts, such as what we have called here conversation?

A My concept of conversation is, as I say, two minutes—we don't hold a stop watch—two or three minutes as we are moving about, a chat, whereas the interview, and I am not borrowing the Judge's word because I think I used it with Mr. Bagdikian, is an in-depth dialogue, to get away from conversation for a minute.

The distinction between conversation and interview is a few questions almost on the move, whereas an interview is sitting down at length with a named individual.

Q How is it that the conversations which have been held in your institution between the inmates and the media come to get started?

How do they get together, the member of the press and the inmate?

A By moving around the institution.

THE COURT: On tours?

THE COURT: On tour?

[176] BY MR. KATZ:

Q Do you permit prearranged discussions between a member of the press and an inmate?

A Not with—no.

Q When conversations are held between members of the press and inmates, do you have any policy respecting whether or not a member of your staff must listen to it?

A I think this is where considerable confusion comes in. We have a policy that a member of the staff will accompany whoever is going on tour.

Q What is the purpose of this?

A For general supervision, particularly in recent times when we are still in somewhat of a stress situation.

Q Is this staff member supposed to listen to the conversation?

A No, he doesn't have to listen to everything. Normally, because we are moving, he heads it; but the two- or three-minute kind of rule, if I can use that, is still available.

THE COURT: In other words, what you are talking about is somebody who will take a member of the press through the dining room, the mess hall, and he says to an inmate, How is the food? Is it better or worse than the last place you were in? He may listen to that?

THE WITNESS: Right.

THE COURT: But if he wants to pull off and talk for [177] a couple of minutes, you will let him, I take it?

THE WITNESS: Right. But the distinction is a lengthy talk.

THE COURT: Right. That is the atmosphere I have gotten from all the testimony.

BY MR. KATZ:

Q Based, Warden, on your experience in the field of corrections, as you have related it to the Court, do you have an opinion, in your professional judgment, as to whether or not there should be permitted personal, private interviews between members of the press and inmates?

A Yes, I believe very strongly that the impact of a reporter coming in builds up the ego, if you will, or leadership of individual inmates, yes.

Q It is your opinion that this should be prohibited?

A Yes.

Q Do the inmates of your institution receive newspaper and magazines from the outside?

A Yes.

Q Are these censored at all?

A No, only in the sense that Mr. Alldredge said. If we got one that we think is going to blow the roof, then we take note of it. But not in a sense of—

THE COURT: Did you shut off during Attica?

THE WITNESS: No. We are in the New York area and [178] every television set—

THE COURT: That is why I was asking. You didn't even shut that off, did you?

THE WITNESS: Oh, no, no. We have three New York channels right in the institution. Every living quarters has a T.V.

THE COURT: True.

BY MR. KATZ:

Q They are permitted to watch television without restriction?

A They vote for it. A committee votes for, I believe it is a week's period. In any case, several days. They choose from the T.V. Guide.

Q That is a committee of inmates?

THE COURT: Whether they want to listen to the F.B.I. or something else?

THE WITNESS: You will be surprised, sometimes they have passed up pro football for some program. But that is unusual; mostly it is sports.

BY MR. KATZ:

Q Do you have any inmates in your institution, either now or in the recent past, who have been persons of national prominence?

A Yes, I have.

Q Would you name some of those for the Court?

[179] A Past or immediate?

Q Both.

A You want at Danbury?

Q Just at Danbury.

A Well, the Berrigan Brothers are pretty well known. I have had them. Neither one is there at this time.

Q When were the Berrigans there?

A They came in August of 1970 and one of them went out to the Harrisburg trial in January; and the second one was paroled, I believe, late February, recently.

Q Was there a great deal of interest manifested by the media in the Berrigans?

A Tremendously.

Q And what forms did this interest take?

A Oh, just about all forms. You are talking media now?

Q Yes.

A Requests for interviews, requests for stories, requests for sermons, just an enormous amount of requests.

Q Could you give us an idea of how many?

A No, except that there were many days I had several requests. It depended on other events where their names were being mentioned in the press, and topical events. Some days there would be nothing; other times, there would be many.

Q Did you feel that if personal interviews were permitted with the Berrigans that this could create a difficult [180] situation?

A Yes, I felt very strongly.

Q Do you have any other inmates at the present time who are well known nationally?

A You know, it is one of those things where you have to stop and think. It is a little difficult. I have Johnny Dio, who is pretty well known around. But over the course of two and a half years, we have had several and I really have to start checking back.

We have many who are perhaps not so nationally known but who are the center of attention in their own back yard. I can't think of his name, but the Mayor of a New Jersey city, and it is not Noah's friend. We had seven and eight calls a day about him, because it was rumored that he had made parole at the same time that he was involved in something else in the local town; and it was a constant barrage of inquiries on him.

Q Are inmates of your institution being permitted at the present time to write to the media?



A Yes.

Q No restrictions on this?

A No.

THE COURT: Did you disseminate the policy in any fashion throughout the institution?

THE WITNESS: Yes. We disseminated it to every living quarters and the two or three principal bulletin boards, such [181] as the one in education, which is read, not by all, by any means, but by a large cross-section; and we posted one in the law library. We have a law library.

BY MR. KATZ:

Q Have prisoners been permitted to receive mail from the media?

A They are permitted. I can't recall coming back.

Q Are members of the press being permitted to visit your institution at the present time?

A Under the policy statement, yes.

Q And they are being permitted to hold conversations with inmates, as we have defined these terms, correct?

A Yes.

Q During the recent incidents at Danbury, were any restrictions place on any of these?

A Yes. We invoked—I don't know if we formally did—that phrase in the policy statement which permits us to declare an emergency.

Q Do you know the Plaintiff, Mr. Bagdikian?

A Yes.

Q Do you see him here today?

A Yes, the second man there (indicating).

Q Did Mr. Bagdikian visit your institution?

A Yes.

Q When did Mr. Bagdikian visit Danbury?

[182] A I don't remember the date but it was the day after, I believe, his most recent visit to Lewisburg. I believe it was a Wednesday, last week, I think.

Q It was last week?

A A week ago yesterday. I would have to double check the calendar, but I believe that is right.

Q Would you tell the Court what transpired during Mr. Bagdikian's visit.

A Well, Mr. Bagdikian arrived about 11:00 o'clock, and we sat in my office, I would guess, for an hour, possibly a little longer.

Mr. Bagdikian's prime interest was to talk with the members of the original negotiating committee, whom he believed were in segregation in some part. We chatted at length on that part of it. We tried to encourage him to go about the institution. He explained that was not his purpose at this time.

We discussed a little bit of his Lewisburg visit and we went for a brief lunch. On the way back, I had to go for a phone call. I should have explained that the "we" included Mr. Benson, Charles Benson, my Associate Warden.

Mr. Bagdikian did go through one quarters on the way back and the dining room. The meal was over at this time, of course. And then we chatted for possibly another hour back in my office, at which time we again tried to persuade him to take a tour of the institution. That is about it. He left about [183] 2:30.

Q Do you know whether Mr. Bagdikian talked to anybody, any of the inmates?

A I did not see him, personally, but my understanding with Mr. Benson is he talked with two or three, yes.

Q Did you ever tell Mr. Bagdikian that any conversations he had with inmates would be listened to by members of your staff?

A When we returned from the dining room, we talked about this in particular, and we had trouble with conversations, interviews, and whatnot. But we made it clear, I hope, that if he wanted to go out in the compound—I think he introduced the point that he had been talking with one inmate, and suppose that inmate had asked to have Mr. Benson step aside; and we said, yes, certainly, for at least two or three-minute kind of thing.

Q So you never told him that any conversation he had with an inmate would be listened to?

A Whatever I might have said earlier, it was perfectly clear at that time. I want to make this clear because there may be some confusion. In the morning we were talking in very general terms and the heavy emphasis

was on Mr. Bagdikian's wish to interview individually and our wish to have him at least see the institution before we got into any other areas.

Q Do you permit prisoners to help each other in preparing [184] letters to the news media?

A Do I help them?

Q No, do you permit prisoners to help each other?

A Oh, yes. We have a small but a number of Puerto Ricans who can't read and write English and they are certainly allowed to have a fellow-inmate help them.

THE COURT: You have a lot of letter writers there who help the other men for cigarettes.

THE WITNESS: Yes, a lot of writ writers who help each other, too.

THE COURT: Surely.

BY MR. KATZ:

Q Since the policy statement came in permitting written letters to the news media, do you know whether or not that has been extensively used?

A I know that many letters have gone out. I don't have the exact count.

Q Are those letters that go out from Danbury to the media censored in any way?

A No, they are what we call P.M.B., prisoners' mail box, sealed and put in a separate box. Only one person picks it up and brings it over to my secretary, who attaches a transmittal letter, which just explains the rules of the policy statement; and it goes unopened.

MR. KATZ: Your witness.

[185]

#### CROSS-EXAMINATION

BY MR. CALIFANO:

Q Warden Norton, how many reporters have been at Danbury since the work stoppage and asked to see the people that Mr. Bagdikian asked to see?

A How many—you have two questions, at least, I think.

Q How many reporters—

**THE COURT:** The question is, has any other newspaper reporter wanted to see the people involved in the leadership of the work stoppage?

**THE WITNESS:** Yes.

**THE COURT:** How many?

**THE WITNESS:** I really don't know.

**BY MR. CALIFANO:**

**Q** How many have come to Danbury?

**A** One has come to Danbury.

**Q** Who?

**A** A local reporter.

**Q** A local reporter there; that is it?

**A** That is it. However, during the stoppage, many did. I talked to them, and that was it. There was no follow-up at that time.

**Q** But at the present time, the only one seeking to go there is Mr. Bagdikian; is that correct?

**A** That is correct.

[186] **Q** Were the Berrigans Big Wheels at the prison?

**A** Yes.

**Q** Even though—

**A** I guess we are in agreement about Wheels. You can go around and around for months on that one.

**Q** I have been taking my education in prison terminology today. So I think so.

**A** Maybe I had better qualify it. They would certainly have liked to have been and in a sense that everybody knew who they were, they commanded some attention.

**Q** Even when you had a policy that did not permit even correspondence outside? They were there before this policy was changed?

**A** Correct.

**Q** So with total restriction on their access to the media, they were still Big Guns or V.I.P.'s, or what-have-you, or notorious people and well known?

**A** Notorious, certainly, yes, in the sense that it is highly publicized.

Q You made one statement I just want to make sure I understood. You said that you wanted Mr. Bagdikian to "see the institution before we got into any other areas."

Did you mean to imply by that if he had seen the institution, you would have then let him see these prisoners that were on the negotiating committee?

[187] A No, not individually, no.

Q I didn't think so.

I have no further questions.

MR. KATZ: No redirect.

THE COURT: Thank you very much, sir.

(Witness excused.)

MR. HANNON: May we have five minutes before we call Mr. Carlson?

THE COURT: Yes, I think it would be a good time to take five minutes.

(Whereupon, a short recess was taken.)

MR. HANNON: We will call Mr. Carlson, if Your Honor please.

WHEREUPON—

NORMAN A. CARLSON

was called as a witness by the Defendants, and after having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. HANNON:

Q Mr. Carlson, would you tell us your name, please, and your present responsibility with the Government?

A Norman A. Carlson, Director, Federal Bureau of prisons.

Q Of the Department of Justice?

A Department of Justice, that is correct, sir.

Q This is the Federal system that we are talking about?

[188] A That is correct.

Q How long, Mr. Carlson, have you been connected with the penal institutions of any sort?

A I have been with the Federal Bureau of Prisons for 15 years. For two years prior to that, I was with the Iowa State system.

Q Would you relate to us your experience in the penal institutions?

A Yes, I started out as a correctional officer in the Iowa State Penitentiary in 1956, while I was in graduate school. After graduating, I went back to work for the Iowa State Penitentiary for approximately a year. In 1957, I joined the Federal Prison System at Leavenworth, Kansas; was a parole officer there two years; went to the Federal Youth Center at Ashland, Kentucky, as a case work supervisor for approximately two years; came into Washington in 1960 and for four years headed up the Halfway House Program which the Federal Bureau of Prisons at that time inaugurated.

1965-66, I was a student at the Woodrow Wilson School of Public Affairs at Princeton University, National Institute of Public Affairs Fellowship; returned to the central office of the Federal Bureau of Prisons in 1966 as Assistant to the Director; held that position for five years until I was appointed Director in March 1970.

Q Now, Mr. Carlson, do Warden Alldredge and Warden Norton [189] belong to you, sir?

A They certainly do and I am very proud of them, sir.

THE COURT: They report to him.

BY MR. HANNON:

Q I show you a policy statement, Mr. Carlson, and ask whether or not you are responsible for the issuance of this policy statement that bears the date of 2/11/72?

A Yes, I am.

Q You heard Warden Alldredge and Warden Norton testify extensively respecting the meaning of that policy statement. Do you agree, sir, with what they have said about it?



A Yes, I believe their interpretation is the correct interpretation of this policy.

Q Could you elaborate or could you help me out, please, and tell me whether or not a conversation is to last two or three minutes, as Warden Norton would seem to feel, or would a conversation last longer than two or three minutes, if necessary?

A I think it would depend on the circumstances again. To me, a conversation is something spontaneous which happens in an institution. I would differentiate that from an interview which is planned in advance, where the inmate has been hand-selected or selected in advance.

In terms of the time element, I would say five to ten minutes probably for a conversation. I can certainly envision situations where it may be longer than that. It [190] depends again on the institution and the particular circumstances.

Q Now, the policy statement that you have before you went into effect in 1966, except for one change, did it not?

A Essentially, there was one change made in this most recent policy statement.

Q What is the major change, please?

A We now permit inmates to correspond through the sealed prisoners' mail box system to members of the press; the press, in turn, can write back to the inmates and the correspondence coming back into the institution is only opened for inspection of contraband. So the inmate can carry on a dialogue, so to speak, or certainly carry on correspondence with any member of the media.

Q Now, would you tell us something about the Federal penal institution. How many facilities are there?

A Yes, we have—

THE COURT: If it would be of some help in that regard—I don't mean to interrupt—I have before me, out of my own library, the 1970-71 report of the Bureau of Prisons, which sets forth in some detail the different institutions and their locations and the nature of the program, Mr. Hannon. I am taking judicial notice of that report, as part of the material.

I don't want to cut you off any, but it even has Mr. Carlson's picture on the front page, along with a number [191] of these other gentlemen, and it is a very detailed and interesting report.

MR. HANNON: That is acceptable to me, Your Honor.

BY MR. HANNON:

Q May I ask, Mr. Carlson, how many inmates do you have within the Federal penal institution?

A We have 21,500 at the present time. It has been going up rapidly over the past two years, I might add.

Q How does our Federal penal institution compare to the California penal institution?

A I think there is a great deal of similarity between the Federal and California systems, both in terms of complexity and certainly size.

Our system at the present time has the 21,500 inmates. The offenses range all the way from murder to skyjackers, those that threaten the President, on down to some of the more white collar type offenses. But we certainly have a very complex system.

I might also point out that we take from time to time many of the severe custody and security problems from some of the state systems, including the District of Columbia. It is not infrequent when a governor or a high official in one of the states will call and ask us to take a particular inmate or a number of inmates who have been involved in a serious incident because of the fact that we do have probably a more [192] broadly-based type of correctional system, 28 different institutions.

Q Are all of your institutions satisfactorily staffed, Mr. Carlson?

A No, sir, I certainly couldn't say that. I guess, like any other correctional administrator, we need more facilities, positions, personnel, recreational activities, and so forth. I think corrections has been grossly neglected in the years gone by. However, I think there is progress being made at the present time. Our budget has increased substantially recently. We have a number of new

building programs underway and, frankly, are optimistic as we look toward the future.

Q Recently Judge Gesell and I were involved in the problems related to the youth correction facilities and how they were overcrowded.

Are the adult facilities within the Federal penal institution overcrowded as well?

A They are equally overcrowded, there is no question. All of our institutions are grossly overcrowded at the present time.

Q And what about recreational facilities for these inmates? Do you have adequate recreational facilities?

A No, with only several exceptions, such as the Kennedy Youth Center at Morgantown, West Virginia. We do not have adequate recreation facilities, particularly during the winter [193] months, which is the crucial time. During the summer, there is ample outdoor recreation at all our institutions.

Q Do you have or lack constructive work programs within every institution?

A We certainly don't have the type of programs that we think are necessary to do the job that is before us in terms of trying to correct the offenders committed by the courts.

Q Do these deficiencies, in your judgment, make it more difficult to operate the facilities?

A They certainly do. They certainly increase it; and, of course, the population pressures exacerbate that problem.

Q Now, Mr. Carlson, during the course of this hearing, the issue was raised respecting whether or not, pursuant to your new policy, inmate mail to the news media is transmitted from the institution facility without censorship.

Are you in a position to tell Judge Gesell whether the mail goes out, to your knowledge, uncensored or whether it is censored in any fashion?

A From personal opinion, I can attest to the fact it is uncensored. I occasionally get an irate phone call from a person who has received a threatening or obscene letter. A Federal judge called me, very irate. He received a

letter from an inmate. I explained the procedure and he understood.

On that basis and from other experience over the years, I can attest to the fact that the mail goes out [194] uncensored.

THE COURT: I didn't think there was any claim of censorship. I thought the statement was made only that some of the prisoners believe it is censored.

MR. HANNON: Yes.

THE COURT: I have not the slightest question in my mind that there is any censorship.

MR. HANNON: Once again, Your Honor, I am encouraged.

THE COURT: I think the issue was presented on the papers that the prisoners feel that it is, and I can understand that feeling, although it be wholly unwarranted. I think the point was made that that could be reassured by personal interview. That is what they were contending.

You don't contend that you have any evidence of censorship of mail, do you?

MR. CALIFANO: No.

THE COURT: I didn't think so.

MR. HANNON: I think I did ask Mr. Bagdikian and he said he had no personal knowledge.

THE COURT: I want to say, I do not think that is an issue before me.

MR. HANNON: I want to put it to rest, in case anybody might think it was an issue, if Your Honor please.

BY MR. HANNON:

Q Mr. Carlson, the 1966 policy statement that you [195] changed on February 11, 1972—answer this yes or no—did you have a reason for changing the policy statement?

A Yes, we did.

Q Now, in connection with the change in the policy statement, have you considered the change of policy that exists now within the Federal system as against the

similar systems that exist in some of our states in this country?

A Yes, we have.

Q Would you tell Judge Gesell, if you would, the comparability of our system to some of the others you are aware of?

A We have been under study for several months in terms of our policy statement concerning inmate access to the press. We are in litigation in several other districts on the same question.

Prior to the development of this policy statement promulgated on February 11, I, personally, contacted the state directors of corrections in most of the large states that had comparable problems. In addition, we talked with all of our institutional wardens and actually had them into Washington and spent several days reviewing which policy we felt would be the one that we could live with, in terms of the internal control and supervision of the institutions.

In calling some of my colleagues in the state systems, I found that many of them did not have policies; others that did have policies left it very much discretionary with the [196] warden or administrator of the institution. The warden could or could not approve the press interview, depending on his own particular feelings in the matter.

On the advice of my General Counsel and the General Counsel's office in the Bureau of Prisons, we felt we could not live with such a policy. We had to have something uniform that could be applied across our system, 28 institutions and 14 halfway houses.

THE COURT: Why, Mr. Carlson? I am very interested in that. There are certainly many aspects of the correctional process that you do leave to the warden's judgment.

THE WITNESS: Not in terms of broad policy, Your Honor. Generally, our policies and procedures are written in such a way that they are applicable across the system. So that—

THE COURT: Don't they have discretion in discipline?

**THE WITNESS:** No, the general policy on discipline is applicable at Lewisburg as well as it would be at Morgantown.

**THE COURT:** Isn't that a broadly discretionary policy to the warden so he can run his own institution?

**THE WITNESS:** Yes, it gives him considerable latitude, but it sets out the guidelines and minimum requirements.

**THE COURT:** This has no guidelines. This is an absolute, and I am wondering why you thought it had to be an absolute.

**THE WITNESS:** Because of the fact that we have inmates [197] that are transferred from one institution to another, from Lewisburg to Danbury, from Danbury to McNeil Island, in Washington. We have a great deal of transfer of inmates because of geographic residence. We have inmates that go out and back into a different institution on new Federal offenses or related to a parole violation. We thought we had to have a policy that would be applicable at Lewisburg as well as at LaTuna, Texas. We couldn't differentiate because the inmate happened to be at a different institution at a particular time.

**BY MR. HANNON:**

**Q** Judge Gesell said it is absolute. It is not absolute in the sense that the press can't engage in dialogue with inmates?

**THE COURT:** It is absolute on the issue before me, that there can be no interviews. That is what I meant.

**MR. HANNON:** It is absolute—

**THE COURT:** Absolute on the issue before me, i.e., no interviews, is it not?

**THE WITNESS:** With identifiable inmates.

**THE COURT:** There is no exception to it.

**MR. HANNON:** We will settle it.

**THE COURT:** Isn't it?

**MR. HANNON:** No interviews.

**THE COURT:** That is what I mean. That is the only respect in which I meant it was absolute.

**MR. HANNON:** I have great difficulty in saying it is [[198] absolute. If what we are talking about is ex-



change of communication between prisoners and media, this is not absolute in the sense it prohibits all exchange of communications. That is what I am concerned with.

THE COURT: I should not have used the word, perhaps, Mr. Hannon. I stand corrected. What I meant, and I think you understood, is that there is an absolute prohibition of interviews.

MR. HANNON: Yes.

BY MR. HANNON:

Q Mr. Carlson, would you tell us why you changed the policy that you now allow uncensored mail to the news media and uncensored mail back from the news media, except to examine, to make sure it doesn't incite riots or contain contraband? Why did you change the policy, please?

A As I indicated, we explored a number of alternatives that might provide access between the inmate population and the press; and based upon my own personal knowledge in the field of corrections, and conversations with all of our top staff and many of the state directors of corrections, I felt this was one policy which we could put into effect which would provide the communication between the inmate and the press and at the same time preserving the security and control of our institutions; and that, of course, is one of our very prime concerns, particularly in this day and age of difficulty.

[199] Q Did you think it would create a healthy environment between the news media and the inmates of the institution insofar as being able to communicate back and forth, that that would be in the public interest?

A Yes, I felt, obviously, the press does have an interest in our institutions and we encourage them to visit and we have for many years. I have been affiliated with the organization for 15 years. We have always encouraged the press to see our institutions and programs.

THE COURT: Mr. Carlson, let me ask you something. I don't want to be misunderstood. It is purely hypothetical.

A Newspaper gets word, perhaps, through—well, in this case, word through a Congressman of certain people

being denied medical aid. There is word that comes out that somebody has been brutally blackjacked, or something of that kind. The press goes to the warden. The warden says there isn't a word of truth in it.

Under this policy, that is the end of it?

THE WITNESS: No, sir, not at all.

THE COURT: How does the press, if it can, ascertain whether that charge—which you wouldn't tolerate in your institution for a minute—is true?

THE WITNESS: That is right.

THE COURT: How does the press ascertain whether or not that charge is so?

[200] THE WITNESS: I am certain if a reporter came to any of our institutions with that type of allegation, that an inmate had been brutally beaten, that the warden would make certain that the inmate was seen physically by the reporter, by the news media.

THE COURT: Now, in this instance, the reporter has come to your institution and says that he has reliable word from members of the Bar and from others that the leaders of the work stoppage have been thrown into solitary confinement, have been maced, have been denied medical care because they participated in the work stoppage.

Now, what is the difference?

THE WITNESS: I think, as Warden Alldredge has indicated, he did offer an opportunity to see the segregation unit where the inmates in question were confined. If there were any signs of brutality, they obviously would have been visible. In addition, we have had many other people that have talked to these particular inmates, their own attorneys, for example. If they would have noticed this, I am sure they would have taken appropriate legal remedy.

THE COURT: One of the remedies they took, apparently was to go to the press.

THE WITNESS: There were other alternatives which they had available, of course.

THE COURT: What it really comes down to is this: [201] I am not being critical of this; I want to understand it. It comes down to the fact in such situations, by

and large, the exposure of impropriety, if there is any, will depend on other processes than the press?

THE WITNESS: There are other processes available, but I think—

THE COURT: There are all kinds of writs that we get, and things. Certainly, there are. It isn't shut off.

THE WITNESS: It could also be by the press in their tour of the institution. They are permitted to see the segregation unit. If they find conditions there that do not conform to our standard and policies, they certainly would call this, I am sure, to someone's attention.

BY MR. HANNON:

Q Mr. Carlson, let us put this to rest, if you will please.

Is it not true that both at Danbury and at Lewisburg, when Mr. Bagdikian visited those two institutions, he could have gone to segregation and conversed with each member of the so-called negotiating committee that was in segregation? Could that not have occurred, if he was willing to accept it, sir?

MR. CALIFANO: Your Honor, I object. I think if we want to put it to rest, let's put it to rest with the people he talked to.

[202] THE COURT: If there were any instructions given by Mr. Carlson, I will take his instructions.

MR. HANNON: We are talking about the policy, under the policy. I think it is clear from the other two that he was offered this and refused it.

BY MR. HANNON:

Q Now, under the policy—

A Under the policy, he certainly could have.

Q That he could have gone on the tour of the institution and he would have gone through segregation?

A That is correct.

Q And he would have had an opportunity to converse with each person that was in segregation, as he toured the institution?

A (Witness nods assent.)

Q You are nodding your head and I wish you would speak.

A You are correct. I say, yes.

Q Thank you.

What, in your professional judgment, Mr. Carlson, would be the effect of allowing inter-face, in-depth interviews with particular individuals by the news media? What would be the effect of that?

A I think it would give notoriety to those individual inmates and cause them to become leaders, so to speak, in the institution. As you know, an institution is a total community [203] and when some inmates receive a great deal of attention, be it from the press or other means or other parts of our society, they do tend to rise up into a leadership role. At times, this can have a very negative effect on the institution and the environment of the institution.

As I indicated, one of our prime responsibilities is to maintain control and supervision of these institutions, and to grant interviews, particularly with some of the inmates who have been involved in serious incidents, could cause very severe consequences for the administration of that institution.

Q Is that why you are unwilling, sir, to change the policy from what it is today?

A Yes, based upon the experience of a number of our wardens, based upon discussions with other correctional administrators, I feel that we could not permit such a policy in our Federal prison system today.

Q How many wardens do you have, Mr. Carlson?

A We have 28 institutional administrators. The majority are referred to as wardens, several are called superintendents and directors.

Q Were each of the wardens consulted respecting whether or not interviews of prisoners should be allowed to the news media?

A Yes, they were.

Q Was any one of them in favor of them?

[204] A Some of them indicated it would not present a problem in their institution. Of course, in some of your juvenile or youth institutions or minimum security institutions, it would not, obviously, be a problem. Universal-

ly, in all of our nine major institutions we operate, represented by the penitentiaries, particularly, they were uniformly opposed to it.

Q Yes, sir.

THE COURT: That is a preference, then, to have the leadership among the prisoners developed within the prison based on other factors?

THE WITNESS: Certainly.

THE COURT: Are there not a large number of unhealthy factors that determine leadership within prisons?

THE WITNESS: There are, Your Honor. On the other hand, I think there are ample opportunities for leadership to emerge in the institutions. We have a number of activities, Junior Chamber of Commerce Chapters, Toastmasters, prayer groups, Holy Name Society, on and on, where leadership can emerge. We think this is positive leadership and leadership we encourage. I don't think there is any correctional administrator that encourages the negative type of leadership that can cause problems to security and control of that institution and do damage to staff and inmates.

THE COURT: I am sure it isn't encouraged. I wasn't suggesting that. There are factors operating in prisons for [205] inappropriate types of leadership.

THE WITNESS: I certainly would agree to that.

THE COURT: What I don't entirely understand is why it is felt that all of these interviews will be adverse to the prison. What experience is there to indicate that some of these interviews will not be beneficial to the prison?

THE WITNES: Well, Your Honor, I certainly wouldn't mean to imply that they would all be negative. Quite the contrary. But the problem we have is how we can develop a policy and procedure which are not arbitrary left in the hands of the warden. I certainly can envision many times when inmates would have complimentary things to say about our institutions.

THE COURT: That would be my impression.

THE WITNESS: How do you develop a policy which would not at the same time permit the very negative, hostile, anti-social individual from developing himself into

a very negative force within the institution? That is the problem we are grappling with; we did grapple with.

BY MR. HANNON:

Q Do you have some knowledge and reasonable anticipation, Mr. Carlson, respecting the nature of the prisoner that the press would be interested in, the type of prisoner the press wants to interview?

A Yes. Based on my experience in institutions and from being in the central office in Washington, there is a very [206] small segment of the inmate population that is of any interest at all to the press. The notorious inmates, of course, have already been well documented. We have a number in the Federal system because of the unique character of the Federal system. At the same time, the press is interested in some of the more hostile, militant inmates that do present problems in terms of management and control of the institution.

Q Under the circumstances, do you reasonably anticipate the type of person the press might be interested in would be saying something nice about your penal institutions?

A I guess after a while in this business you get a little biased. I can imagine that there would be, certainly. We have had some very favorable stories written about some of our programs in recent years.

MR. HANNON: May I have Your Honor's indulgence, please?

I have no further questions of Mr. Carlson.

### CROSS-EXAMINATION

BY MR. CALIFANO:

Q Mr. Carlson, you said early in your testimony that incoming letters from the reporters were inspected only for contraband. Do you want to correct that?

A I believe the policy says, especially for contraband of for contents which would incite illegal activity. There is a broader clarification, although, frankly, contraband is our number one concern.



[207] TH ECOURT: You certainly wouldn't suggest, Mr. Califano if a reporter sent in an escape plan that it should go right on through, would you?

MR. CALIFANO: I don't think reporters can learn enough about the prisons to send in a good escape plan.

BY MR. CALIFANO:

Q One other point.

I think you indicated in your testimony, sir, that you have different kinds of institutions. You have the ten that are penitentiaries and the others are in varying lesser degrees of need for security, or lesser degrees of prisoners in those other prisons; is that correct?

A Yes, that is correct.

Q Your policy—if I may refer you to it, Paragraph 8, on Page 2—applies the same policy to offenders who are in community programs as it does to inmates in maximum security prisons.

Did you give any thought to drawing a distinction there when you were putting this policy together?

A Yes, that is one of the alternatives considered; but, again, on the advice of our General Counsel, who has done a good deal of research on this subject, the feeling was that we simply could not differentiate between the total Federal prison system, as inmates do move from one status to another, as I indicated.

[208] For example, we transfer many inmates to place them closer to home or, when near release, to a lesser security type institution.

Our feeling was, because of the range of our Federal penal system, as Mr. Procunier indicated about California, there had to be some uniformity across the entire system. We could not make a distinction between one institution and another.

Q I will stay with your policy for a while, if I may.

There is a distinction in the policy, in terms of the letter going out, which we have heard over and over again today, where the prisoner may sign his name, his name may be used in the press, and what-have-you.

What, in your opinion, was the basis for distinguishing between the notoriety of prisoner would receive from

a letter in which his name would be used and the notoriety he would receive from a personal interview?

A We felt, and I, personally, feel there would be much less notoriety connected with a letter going out than there would be from a personal interview, where the press actually makes a trip, frequently many miles, to an institution, and the inmates in the institution immediately know that the press is present and there for one purpose, and that is to interview this one particular inmate.

Q Well, you mean there would be less notoriety within the prison even if no story were written from an interview [209] and a story were written from a letter?

A No, sir, there would be far less notoriety from a letter than there would be from any type of interview situation, far less notoriety.

Q It is the publication that is important; or is it the visit that is important?

A I think both are important. The fact that a reporter or anyone comes to an institution to visit a given inmate immediately spreads throughout the institution. It is a very small community. A letter going out, on the other hand, is very innocuous and, frankly, no one else would know it, unless it was published in a particular paper and other inmates may or may not read that paper.

Q So the visit is one element of your concern, the notoriety the visit, itself, gives?

A Yes, sir.

Q You thought letters are less likely to be published by the press?

A No, we gave no consideration as to likelihood of being published. Frankly, that never has entered our discussions. We were trying to find something that we felt would provide a balance between our responsibility for the management and control of our institutions and inmates' access to the news media. We felt this is one way in which it could be accomplished.

Q Do you feel that a newspaper story off of a letter—[210] take our hypothetical example before, and answer it as the expert that you are—a letter which results in a newspaper story on the front page of the Washington Post is a matter of concern to the warden of a prison?

A Oh, yes, it would be.

Q It would be. And his name would be used.

You felt that that is a matter of less concern, though, than a personal interview in which the man's name cannot be used published in the newspaper?

A Yes, because even though the inmate's name could not be used, the inmates in the institution would know who it is automatically within a few minutes of the interview. The fact that the name is used or not, I think, is really not of any consequence.

Q You also concluded in your directive, as we know from questions today and answers, photographs of prisoners could be taken if they consented by the press?

A (Witness nods assent.)

Q Does a prisoner gain any notoriety from having his photograph taken?

A I don't believe so.

Q If it is published in the newspaper?

A The photograph ordinarily taken does not identify the individual inmate, just a shot generally in the institution, [211] of the hospital, shop, or educational program or chapel. The fact that an inmate happens to be there generally does not give him any notoriety.

Q In the case we have, for example, could Mr. Bagdikian take pictures of the prisoners in segregation, not speaking to them, if they were willing?

A I am not in a position to comment specifically on that. I would have to refresh my memory from the policy statement with respect to pictures. He did take a number of pictures, however, when he was at Lewisburg. I think he was given pretty much free reign of taking whatever pictures he desired.

Q Under your regulation, you said he could go to the segregation unit, you would permit him to go see, look at any prisoners and see if they had been hurt.

MR. HANNON: I think it is irrelevant. I object to it. We are not talking about picture taking.

MR. CALIFANO: Your Honor, I think—

THE COURT: It is argumentative, isn't it?

MR. CALIFANO: Let me rephrase it.

BY MR. CALIFANO:

Q You indicated in your testimony that Mr. Bagdikian was free, at least as you would interpret the policy, to go to the segregation unit and look at these prisoners.

A That is correct.

Q To check any allegation that a prisoner had made [212] that he had been maced or hurt, or what-have-you.

A That is correct.

Q As a result of the strike.

In order to check the allegation he, presumably, would have to see the prisoner who had alleged that he was maced or struck.

A (Witness nods assent.)

Q Is that correct?

A That is correct.

Q Could he have a conversation with that prisoner of two or three minutes?

A Yes, he could, under the terms of our policy statement.

Q So that he can request to see a specific prisoner who is on the negotiating committee who alleges that he has been maced or not received medical treatment and have a conversation with him of up to ten minutes?

A No, I didn't say that at all.

Q I thought you said that, Mr. Carlson.

THE COURT: Mr. Carlson is saying if the information is that there are a number of them in solitary, or some other confinement, he can go there and talk to them as a group. He cannot talk to them individually.

That is what I understand you have been saying and what the other men have been saying.

THE WITNESS: Yes.

[213] MR. CALIFANO: I think Mr. Carlson said he could walk down the line and have a conversation with each of the men in segregation.

THE WITNESS: He could have a conversation as he walked down the line with the men that were in there.

BY MR. CALIFANO:

Q I don't understand. If you do have an allegation from two or three members of the negotiating committee

or any two or three members who say they have been hurt or mistreated in some way, you volunteered that the reporter would certainly be permitted to see them.

A Yes, I believe Warden Alldredge has already testified to that.

Q And to have a conversation with them?

A Yes, sir.

Q He would have to identify two or three prisoners?

A (Witness nods assent.)

Q So there are circumstances, you are telling us now, under which Mr. Bagdikian can identify two or three prisoners and can go and have a conversation?

A No, I think the question is really one of identification. If he would go down through the segregation unit and find an inmate who allegedly had been beaten.

Q How do you check the man who writes a letter and says, I have been denied medical treatment and been beaten up?

[214] You said, I believe, you would make certain that the inmate was seen physically by the reporter.

A As I recall, I said, I am sure the warden in that type of situation would make certain that the inmate had been seen by the reporter.

Q Mr. Carlson, did your counsel advise you to open up to the press in some way in terms of writing your directive? When you say what the reason for the directive was, were you aware of court decisions in this area?

A Obviously, this was a factor that was under consideration, under discussion.

Q You don't believe there are institutional emergencies at either Danbury or Lewisburg, do you, sir?

A At the present time?

Q At the present time?

A At the present time, the answer is, no.

Q Mr. Carlson, are you on the committee on the Model Act for the National Council on Crime and Delinquency?

A I was asked to serve on an advisory panel that reviewed a draft which was developed by the National Council on Crime and Delinquency. I was one of a number of members but that was an ad hoc group. We had

no meetings. We did contribute to the National Council on Crime and Delinquency, of which I have been a member for a number of years. We submitted copies of a number of our policies and our procedures.

[215] THE COURT: But you don't agree with the proposed act to provide minimum standards for the protection of rights of prisoners?

THE WITNESS: Not in its entirety.

BY MR. CALIFANO:

Q You don't?

THE COURT: It is inconsistent with his policy.

THE WITNESS: I was one of the advisory group. I was involved with a number of people. I would doubt anyone was in total agreement with all parts. We had no meetings. We were asked to contribute our thoughts and policies and procedures. It was developed by the legal staff, I believe, Mr. Ruben, of the National Council on Crime and Delinquency.

MR. CALIFANO: May I just have a minute, Your Honor.

BY MR. CALIFANO:

Q Did you consult with the Commissioner of Prisons of New York City when you were making up your policy; do you remember?

A Not directly-with the Commissioner but with one of his deputies who was formerly an associate of mine in the Federal prison system.

Q You obviously decided to reject that kind of wide-open policy?

A Yes, we did.

Q Did you consult with others who had such policies?

[216] I understand there are about ten states that have fairly wide-open policies.

A Yes, we did. As a matter of fact, we called the directors and discussed with the directors of all the states that we had been led to believe had wide-open policies. Frankly, we found from discussing with them that the policies were really not wide open at all. The warden or administrator of the institution had broad discretion as to whether or not to permit an individual interview.



Q How many Federal prisoners have become leaders within the prison as a result of any discussions they have had with the press in prison? Has that ever occurred?

MR. HANNON: I don't understand the question, Your Honor.

THE COURT: I don't see how this man would know.

MR. HANNON: I object to it.

BY MR. CALIFANO:

Q Let's put it this way: The people Mr. Bagdikian desired to see at Lewisburg and Danbury were leaders of the strike or members of the negotiating committee.

A Yes, I understand they were.

Q Was your concern that if Mr. Bagdikian saw them, they would have been strengthened in their leadership position? Were you trying to break their leadership position?

A Well, the decision—

[217] Q It certainly wouldn't create new leaders out of town?

A The decision was based on our policy and, obviously, this is one consideration in the over-all policy. By permitting interviews with individual, identifiable inmates, it would tend to give them an opportunity to gain leadership or have them in more of a leadership position within the institution.

Q Do all your Federal prisons have visiting facilities?

A Yes, they do.

Q Do they all have facilities for counsel to meet with prisoners?

A Not separate facilities. Each institution has its own visiting room, open visiting rooms. In some places, we have special rooms for counsel, where we have room. In others, it is just in the general visiting facility.

Q Do you know of how many times, if ever, a reporter has been given the kind of opportunity—to use Warden Alldredge's words—to meet alone with a random group of prisoners?

A I couldn't cite you a specific number. It is not uncommon, it has never been uncommon. I have permitted this myself in institutions where I have worked. Par-

ticularly in a juvenile youth institution, it is not uncommon for a reporter to sit down and spend time with a group of inmates. The inmate council, or whatever group there may be.

Q One last area.

[218] You indicated, Mr. Carlson, that under your policy the warden can pick the prisoner and present him to the reporter to interview. He can identify some prisoners that a reporter may interview, at least, in a group?

A No, I didn't say that at all, I believe.

Q I am sorry.

A I think the policy says that he can have conversations with inmates as he walks through the institution. The warden doesn't pick the inmate. It is whoever he encounters during his tour of the institution.

Q You say at least at institutions that you have been familiar with, and to your personal knowledge, reporters often on prior occasions have been granted an opportunity of the kind Mr. Bagdikian was granted at Lewisburg in the Federal prison system to sit down for 45 minutes with a group of a half dozen or so prisoners?

A (Witness nods assent.)

Q Yes?

A Yes.

Q When those reporters do that, the prisoners can be selected by the warden? They are not selected by the reporter?

A Not necessarily. It depends on the situation. It can be done randomly; it can be a group of inmates in a particular program in the institution.

Q Or it could be selected? Can they be selected by [219] the warden?

A It could be but I would suspect that most wardens would not want to select them because of the obvious bias that would creep in, that would be assumed to creep in by the selection process.

Q Most wardens would not want to use the beneficial aspect of the press?

A We are sensitive to this factor and we do everything we can to try to eliminate the supposition that we are doing the picking of the hand-selected group of inmates that will say the right things as far as we are concerned.

MR. CALIFANO: Thank you.

THE COURT: Anything further, Mr. Hannon?

MR. HANNON: If Your Honor has no questions of Mr. Carlson, then we rest.

THE COURT: Both sides rest, I take it?

MR. CALIFANO: Yes.

THE COURT: Thank you, Mr. Carlson.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: What do you gentlemen want me to consider beside the preliminary injunction, anything?

MR. CALIFANO: As far as we are concerned, Your Honor, no. It is the preliminary injunction in the context in which I put it at the beginning of the presentation of our case today.

[220] MR. HANNON: I could gain brownie points by saying we would be willing to let Your Honor consider it on summary judgment, in view of the fact he wants you to only consider it on motion for preliminary injunction.

THE COURT: I don't by my question mean to suggest that I have any view at this moment. I think this is very difficult. I don't think this is an easy problem.

The point that was in my mind was that we have had a fairly complete record and I was wondering whether there would be anything different if we go in this case in two stages than if we go in a single stage, if you follow what I mean, Mr. Hannon.

MR. HANNON: I understand.

THE COURT: We have had a full day of carefully, well-presented, appropriate witnesses. I was just wondering whether the only matter before me is the question of the specific preliminary injunction or whether, it being brought in a declaratory judgment as well as an equity-context, the record was ripe for determination of a more final character.

MR. HANNON: If I may address myself to that, Your Honor. If Your Honor agrees with us that there is no First Amendment problem involved, then the action should be dismissed.

THE COURT: I understand that.

MR. HANNON: So we would be willing for Your Honor to consider a motion to dismiss on that ground.

[221] If Your Honor is going beyond that and thinks there are some constitutional issues involved in this case, we would prefer Your Honor restrict it to the request for preliminary injunction. We are satisfied, on the basis of the findings of fact and conclusions of law Your Honor will have to enter in this case, that we will be able to move for summary judgment on those findings of fact and conclusions of law.

MR. CALIFANO: Your Honor if I may. There are, we believe, at least ten other jurisdictions, state jurisdictions, which have in varying degrees press policies that would permit, for example, what Mr. Bagdikian wants in this case. They are not all similar. We have not had time to talk to them.

THE COURT: I understand that.

MR. CALIFANO: Particularly in terms in which our final relief requests that the Bureau of Prisons' regulation be stricken or that portion of it certainly, and some guidelines be provided for the development of a new regulation, it might be helpful to the Court to have before it precisely what those other states provide.

Secondly, to the extent that this Court feels that the New York City or District of Columbia prison experiences are easier or different in any relevant way than the Federal experience,—we happen to think New York certainly is more severe—but to the extent that this Court feels that, we believe that it might be helpful to provide wardens from major [222] state systems who have policies open to the press that might be considered more comparable.

Those are the two points that we would add.

THE COURT: Counsel want only limited issues decided, I take it.

I must say from some of the things you have said, I think you may misstate the role of the Court, Mr. Califano. It is not the Court's task to draw the regulation that the Court feels should be drawn in the event the Court was in Mr. Carlson's position. That isn't my function.

MR. CALIFANO: I didn't mean to imply that, Your Honor.

THE COURT: I have no intention to get involved in that respect. Certainly in this area there is substantial

room for difference of opinion and based on differences of experience and different objectives.

I believe the question the Court has to consider would be the narrow one and I will rule on that. I am going to take it under advisement tonight, of course; and then matters will take their course in the normal litigating manner if that is what the parties desire.

I gather that is what both sides do desire. So that is what I will do. I would much prefer myself to dispose of the entire case on this record but I am not going to put counsel in that position when counsel do not want to do so.

Very well, thank you very much, gentlemen. I will [223] proceed promptly to dispose of this matter, as promptly as the Court can.

MR. CALIFANO: Your Honor, if I may just amend what I said earlier.

As far as we are concerned, in view of what you said about my comments of what we would offer in addition, as far as we are concerned, you can decide the matter on this record.

THE COURT: Why don't you think about it overnight, both of you. I don't want to be influencing tactical or other decisions of counsel. I naturally raised it because at this stage we have had a very full hearing. We haven't been on affidavits; everybody has been subject to cross-examination. We have a fairly complete record.

I have no way of knowing whether there are other things that you would want; or you would want, Mr. Hannon.

MR. HANNON: Yes.

THE COURT: Why don't both of you sleep on it overnight.

MR. CALIFANO: Fine.

THE COURT: Let me know what your considered judgment is about it one way or the other tomorrow morning.

MR. HANNON: Yes, Your Honor.

If Your Honor please, if it will be helpful to Your Honor, the Government is ordering a copy of the transcript of the entire proceedings that occurred here today, so that in the [224] event Your Honor wants to review them, they will be available after they have been prepared.

THE COURT: Yes. I will have that in mind.  
You gentlemen will let me know tomorrow which way  
you feel.

Thank you all very much.

(Whereupon, at 4:10 p.m., the hearing was concluded.)

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### CERTIFICATE OF COURT REPORTER

I, Ida Z. Watson, certify that I reported the proceedings in the above-entitled cause on March 23, 1972, and the foregoing pages 1 to 224, inclusive, constitute the official transcript.

/s/ Ida Z. Watson  
IDA Z. WATSON



DEPARTMENT OF CORRECTION  
CITY OF NEW YORK  
OFFICE OF THE COMMISSIONER

GENERAL ORDERS No. 2

January 4, 1972

To: ALL MEMBERS OF THE DEPARTMENT

AMENDMENT TO THE RULES AND REGULATIONS  
(INTERVIEWS OF DETENTION INMATES BY  
ACCREDITED REPORTERS)

1. The Rules and Regulations of the Department as contained in General Orders No. 6, dated April 21, 1971, are amended as follows:

Rule 4.41A is rescinded and new Rule 4.41A is added to read as follows:

"4.41A Whenever a detention inmate receives a written communication from a duly accredited reporter requesting permission to interview him, the inmate, if he wishes to be interviewed, shall submit such information in writing to the head of the institution. The head of the institution, after having determined that the reporter meets the requirements of accreditation in accordance with the guidelines established in Letter Orders No. 20, dated April 21, 1971, shall instruct the appropriate employee concerned to record the reporter as an authorized visitor on the "Visiting Card-Detention Institution," (Form no. 46 in accordance with existing procedures. The head of the institution shall then notify the inmate in writing that his request to be interviewed by a reporter was granted. In addition, in his communication, the head of the institution shall instruct the inmate that his visit is approved subject to the following conditions:

a. *That the reporter will conduct his interview between the hours of 9:00 A.M. to 3:00 P.M., from Mondays to Fridays, holidays excluded.*

b. *That the interview will take place in the Counsel Room under the same conditions that prevail for other*

persons permitted to interview inmates in the Counsel Room.

c. That the reporter will be required to properly identify himself before he may visit.

d. That he will not be permitted to enter the institution with or be allowed to use any camera or recording device in the conduct of his interview.

e. That he will be treated in the same respect as any other authorized visitor and will be required to comply with all visiting rules and procedure of the institution.

2. *In the event that more than one accredited reporter wishes to interview the inmate at the same time, the head of the institution may consolidate the interview provided that:*

a. *There is mutual agreement in writing by all the parties concerned.*

b. *The head of the institution deems the arrangement to be administratively appropriate.*

3. The following records pertaining to this matter shall then be attached and filed as a permanent record in the "Inmate's Record Envelope."

a. The inmate's written request for permission to be interviewed.

b. A copy of the reporter's letter requesting permission to interview the inmate.

c. A copy of the head of institution's letter to the inmate granting permission for the interview.

d. *If the interview is consolidated, a copy of the mutual agreement by all the parties concerned."*

4. *The provisions of this order are not intended in any way to supersede or to prevent any authorized regular visitors from visiting the inmate during regular visiting hours.*

5. The underlined material in this order is new.

/s/ George F. McGrath  
 GEORGE F. MCGRATH  
 Commissioner

DEPARTMENT OF CORRECTION  
CITY OF NEW YORK

OFFICE OF THE DIRECTOR OF OPERATIONS

Date: April 21, 1971  
From: Director of Operations  
To: Heads of Institutions  
Subject: GUIDELINES FOR IDENTIFYING MEMBERS OF THE  
NEWS MEDIA AS ACCREDITED REPORTERS

1. The following guidelines for identifying members of the news media as accredited reporters as promulgated by Mr. Agenor L. Castro, Director of Public Affairs, as published for the information, guidance, and strict compliance of all concerned:

a. An accredited journalist is one who has a Police Department Press Card made out in his name. These press cards do not bear an identification photograph, therefore other confirming identification will be required.

b. Requests for interviews by foreign journalists must be approved by the Director of Public Affairs as their credentials differ from those of local newsmen.

c. Requests for interviews from reporters representing "marginal publications" such as underground newspapers, newsletters, and business publications shall not be granted unless approval is first obtained from the Director of Public Affairs.

d. Radio and television reporters, as well as magazine editors and reporters representing publications such as Life, Time, Newsweek, U.S. News and World Report, Ebony, Look and the New Yorker shall also be permitted to interview detention inmates provided that they are properly identified.

e. Editors or reporters representing college or high school publications *shall not* be permitted visits.

2. Any further inquiries regarding this matter shall be made to Mr. Agenor L. Castro, Director of Public Affairs.

3. Interviews granted pursuant to this order are subject to the conditions established in General Orders No. 6, dated April 21, 1971, concerning "Interviews of Detention Inmates by Accredited Reporters."

/s/ Joseph D'Elia  
JOSEPH D'ELIA  
Director of Operations

JD'E/bn

cc: Commissioner  
Deputy Commissioner  
Assistant Commissioner, Administration & Planning  
Assistant Commissioner, Rehabilitation  
Director, Public Affairs  
Director, Legal Affairs

\* \* \*

d. If the interview is consolidated, a copy of the mutual agreement by all the parties concerned."

5. The provisions of this order are not intended in any way to supersede or to prevent any authorized regular visitors from visiting the inmate during regular visiting hours.

6. The procedure as outline above may, at any time, be temporarily suspended by the Commissioner whenever, in his opinion, internal or external conditions warrant such suspension.

Benjamin J. Malcolm  
Commissioner

BJM/bn

DEPARTMENT OF CORRECTION  
CITY OF NEW YORK  
OFFICE OF THE COMMISSIONER

GENERAL ORDERS NO.

To: ALL MEMBERS OF THE DEPARTMENT

AMENDMENT TO THE RULES AND REGULATIONS

*(Interviews of Inmates By Accredited Reporters)*

1. The Rules and Regulations of the Department as contained in General Orders No. 2, dated January 4, 1972, are amended as follows:

Rule 4.41A is rescinded and new Rule 4.41A is added to read as follows:

"4.41A Whenever an inmate receives a written communication from a duly accredited reporter requesting permission to interview him, the inmate, if he wishes to be interviewed, shall submit such information in writing to the head of the institution. The head of the institution, after having determined that the reporter meets the requirements of accreditation in accordance with the guidelines established in Letter Orders No. 20, dated April 21, 1971, shall instruct the appropriate employee concerned to record the reporter as an authorized visitor on the institutional "Visiting Card" record in accordance with existing procedures. The head of the institution shall then notify the inmate in writing that his request to be interviewed by a reporter was granted. In addition, in his communication, the head of the institution shall instruct the inmate that his visit is approved subject to the following conditions:

a. That the reporter will normally conduct his interview between the hours of 9:00 A.M. to 3:00 P.M., from Mondays to Fridays, holidays excluded. Exceptions will be made as required when the head of the institution, because of administrative reasons, decides that the inter-

view could best be conducted at a different time or on an alternate day.

b. That the interview will preferably be conducted in the Counsel Room.

c. That the reporter, as well as all members of his reporting staff will be required to properly identify themselves before they may visit.

d. That the approved reporter and members of his staff shall be permitted to utilize cameras, recording devices, and whatever other equipment is commonly considered to be equipment of the trade in the conduct of the interview.

e. That the reporter and the members of his reporting team shall be required to strictly comply with all the rules and procedures set forth by the head of the institution for the conduct of the interview.

2. The head of the institution shall then notify the Director of Public Affairs in order that the interview may appropriately be scheduled at the institution to the mutual convenience of all the parties concerned.

3. In the event that more than one accredited reporter wishes to interview the inmate at the same time, the head of the institution may consolidate the interview provided that:

a. There is mutual agreement in writing by all the parties concerned.

b. The head of the institution deems the arrangement to be administratively appropriate.

4. The following records pertaining to this matter shall then be attached and filed as a permanent record in the "Inmate's Record Envelope."

a. The inmate's written request for permission to be interviewed.

b. A copy of the reporter's letter requesting permission to interview the inmate.

c. A copy of the head of institution's letter to the inmate granting permission for the interview.



**Department of Correction—  
Intradepartmental Memorandum**

**Date** : March 22, 1972  
**From** : Correction Officer, John Walsh  
**To** : Commissioner, Benjamin J. Malcolm  
**Subject** : Press Interviews

Per your request, the following information is submitted regarding inmate press interviews since departmental order of authorization on April 21, 1971.

**A. *Bronx House of Detention***

Three inmates, Herbert Blyden, Kenneth Moore and Richard Moore have been interviewed by the following members of the news media;

WNYU—Voice of New York University  
 WLIB—Radio  
 News Week Magazine—Tom Mathews  
 Channel 13—Jack Newfield  
 Pacifica—Delores Costello  
 Village Voice—Jack Newfield  
 Village Voice—Mary Brosted  
 Christian Science Monitor—Jack Waugh  
 Boston Globe—Robert Tessner  
 WNEW-TV—Mark Monsky  
 News Day Magazine—Flora Lewis  
 New York Times—Fred Federetti  
 Time & Life News Service—James Willwerth

**B. *Branch Queens, Queens and Brooklyn Houses of Detention***

Have received no inmate interview requests from the news media.

**C. *Manhattan House of Detention***

Harlem "4" interviewed by Channel 13  
 Pyle Brothers interviewed by the New York Post

George Carpenter interviewed by The Staten Island Advance

Kenneth King interviewed by The Staten Island Advance

Michael Molaire interviewed by WCBS-TV & The Daily News

Alfred Garry interviewed by Lucy St. John of The Staten Island Advance

Records indicate that thirteen inmates have consented to indepth interviews by the news media since April 21, 1971 throughout our correctional facilities.

/s/ John P. Walsh  
JOHN P. WALSH  
Correction Officer

JPW:jaw

DEPARTMENT OF CORRECTIONS, D. C.  
Office of the Director

DO 1300.3B  
January 24, 1972

DEPARTMENT ORDER 1300.3B

Subject: Public and News Media Relations

1. *Purpose.* To establish responsibilities, policies, and procedures to be followed by Institution, Community Correctional Center and other personnel in dealing with news media and the public.
2. *Definition.* News media includes newspapers, magazines and other periodicals, wire services, radio and television stations and networks, free-lance authors and photographers, and all others whose purpose is to convey information to the public.
3. *Responsibilities and Guidelines.* Superintendents, Community Correctional Center Administrators, Executive Staff, and other employees are involved in and responsible for good news and public relations within their areas of authority and responsibility. The Director has overall responsibility for the conduct of public and news media relations.

The essential elements are that everyone involved, (Superintendents, Community Correctional Center Administrators, Executive Staff and others), deal honestly and forthrightly with the news media and public and do so by being consistent with Department programs and policy.

4. *Policies.*

- a. Information about an inmate that is a matter of public record will be provided to any person who makes a legitimate inquiry during normal business hours. Questions concerning "legitimate" shall be referred to the Director. Such information usually shall be limited to the inmate's name, offense for which convicted, length of sentence, date of sentencing, date of arrival or transfer, parole eligibility date, and date of expiration of sentence.

b. Contents of inmate files, except for the data in paragraph (a) are confidential. Legitimate requests from the news media for additional information about individual inmates shall be referred to the Director.

c. Representatives of the news media are encouraged to visit Department institutions, and other facilities for the purpose of preparing reports about institutional facilities, programs and activities. News representatives calling institutions should be advised that such requests must be approved by the Director. Usually, staff members from the institution will be designated to serve as guides. Such staff members may respond to questions about facilities, programs and activities but should refer all questions about policy and about individual inmates to institutional administrators.

d. Interviews with individual inmates may be permitted after written request to the Director and after an inmate agrees in writing on attached Information release Form (see Attachment I). This kind of interview is distinguished from one in which a reporter may be talking with a number of inmates concerning a story about the institution or one of its programs. In such cases, agreement on the "ground rules" will be between the Superintendent and the reporter(s).

e. Inmates have the right not to be photographed. News representatives must be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged but, if taken, releases must be signed by the inmates. (see Attachment I). In such cases of escape, official photos will be made available to the press.

f. News representatives may visit business establishments which employ work releasees; however, such requests should be submitted to the Associate Director for Community Services or Youth Services so that the permission of the employer is obtained in advance. The rules outlined in paragraphs (d) and (e) above apply equally in the work release situation.

g. Announcement of escapes, disturbances, accidents, and fatal or severe assaults should be made to local news media as promptly as possible by the Superintendent and others or by staff members designated by them. It is advisable to prepare a statement for possible release by telephone or messenger to all media, briefly stating the facts. A telephone report, followed by a written report, must be made to the Office of the Director immediately after an incident occurs. (See Attachment II).

h. Death of an inmate by natural causes normally is not newsworthy. However, upon the death of an inmate who has attained national notoriety, the procedure outlined in paragraph (g) will be followed. (See Attachment III.) Other deaths occurring in Department facilities also make news; for example, those resulting from assaults on inmates or officers involved in law enforcement. Consequently, great caution should be used in reporting these. No comment should be made that would jeopardize either the possible defense or prosecution.

i. All announcements related to Department policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Director. Media inquiries on such subjects should be referred to the Director.

j. Copies of news releases issued by mail, messenger or telephone, should be sent to the Director along with a distribution list. Clippings or summaries of newscasts should accompany these. Copies of releases and other materials issued by the Director's Office will be sent to the Executive Staff, Superintendents, and Community Correctional Center Administrators. Copies of all photographs also should be sent to the Director together with the necessary identification and releases, if necessary.

k. Department policy and programs will be announced only by the Director. Members of the Executive Staff may make announcements about programs but they must be cleared through the Director prior to release.

5. *Methods.*

a. Spot news, routine news and feature news which is cleared through the Director will be prepared, printed and disseminated by Superintendents and others. A basic media list is attached as well as telephone numbers. (See Attachment IV). Superintendents and others should add any media they feel necessary to the basic list. These additions should be reported to the Director.

b. Fairness in dealing with the press is essential. Each member should get the same information concerning news released by Superintendents and others. However, if a reporter develops a story on his own, his "scoop" should be respected.

6. *Cancellation.* DO 1300.3A dated April 2, 1971, is hereby cancelled.
7. *Effective Date.* This Order is effective upon receipt.

/s/ Kenneth L. Hardy  
KENNETH L. HARDY  
Director

DISTRIBUTION: "A" & "B" plus  
President, Lodge 1550, AFGE  
Secretary, Lodge 1550, AFGE



DO 1300.3B  
Attachment (I)  
January 24, 1972

DEPARTMENT OF CORRECTIONS  
District of Columbia Government

INFORMATION RELEASE

Date: \_\_\_\_\_

I agree to the use of my picture and statement in (on) *(Name of publication, radio or TV station)* with the understanding it (they) is (are) to be used solely for informational or educational purposes. No use of it (them) may be made for commercial purposes, nor may it (they) be otherwise exploited.

---

cc: Director  
Superintendent  
Inmate File  
Media

DO 1300.3B  
Attachment (II)  
January 24, 1972

DEPARTMENT OF CORRECTIONS, D. C.

ESCAPE RELEASE FORMAT

(Number) inmate(s) escaped (date and time) from (institution), (official), reported.

He (they) *(briefly and factually describe the method of escape if it is known. Do not speculate. If it is not known, simply say the matter still is being investigated and refer questions to the Director's Office.)*

(Official) said escape procedures were put into effect immediately and local and area law enforcement agencies have been notified.

The escapees are:

(List the names, offenses for which convicted, length of sentence, date of sentence, date of commitment or transfer, parole eligibility date, and date of expiration of sentence for each escapee).

---

(Do not use the following in dealing with the news media.)

It is imperative that a copy of this report be on the Director's desk by 8:00 a.m., the day following the escape unless it occurs during the normal work day, in which case it should be sent to the Director's desk immediately.

DO 1300.3B  
Attachment (II)  
January 24, 1972

DEPARTMENT OF CORRECTIONS, D. C.

CAPTURE RELEASE FORMAT

(Official and institution) reported the capture of (number) inmate(s) who escaped (date).

The (agency which made the capture) apprehended (number, or him or her) at (location) on (date). (Then describe briefly and factually the circumstances of the capture).

The inmates who left (institution) on (date) were:  
(List information detailed in DCDO 1300.)

DO 1300.3B  
Attachment (III)  
January 24, 1972

## OBITUARY RELEASE FORMAT

(This is only a basic obituary format. It should be used only when a well-known, "notorious" inmate dies in an institution. It also may be used to announce the death of a staff member.)

(*Name, age*) died (*date*) following (*a long, short*) illness (or, if true) as a result of wounds (injuries) suffered as a result of an escape attempt, riot, fall, industrial accident (or whatever the facts are).

He has been confined at (*institution*) for (*time*). He was sentenced (*date*) for (*crime for which convicted*).

During his stay at \_\_\_\_\_ he (here list any major positive contributions the inmate may have made. There is little need to add anything else since the news media likely will have nearly complete information on the inmate.)

In the case of employees add:

Date of birth and place

Length of service

Career facts, including promotions, awards, citations

Publications, if any

Educational and other employment background

Date of marriage and to whom and where. It usually is advisable to use only his last marriage.

Number and names of children, and number of grandchildren

Professional and social affiliations.

Above all, check all the facts with the family. If all the information is not available, use what you have.

DO 1300.3B  
(Attachment IV)  
January 24, 1972

## NEWS MEDIA

When calling in a news media release, ask for the city desk in the case of newspapers or the news desk in the case of radio or TV. Sometimes the operator will ask if you want radio or TV news. Usually, ask for the TV news desk. The reporter to whom you give the story may sometimes ask if you'll agree to be recorded. Go ahead and do it, unless you have "mike fright." In that case, ask someone else to do it. All you have to do is read the release.

Frequently, reporters will ask for more details and speculation. Don't speculate, but give any additional *facts* you may have. Above all, keep all who should be informed.

### Newspapers:

Post—223-7200  
Star—484-4200  
News—347-0411 or 347-7777

### Television:

WMAL—686-3020  
737-2900  
WTTG—244-5151  
244-3474  
WTOP—244-5678  
WRC —362-4000

### Radio: (Partial, but usually interested)

WAVA—522-1115  
Metromedia—244-6220  
WRC —362-4000  
WMAL—723-2976  
WUST—462-0011

**PUBLIC INFORMATION SERVICE  
D. C. DEPARTMENT OF CORRECTIONS**

**KENNETH L. HARDY, Director**

**[SEAL]**

**Superintendent's name  
Telephone number**

**DO 1300.3B  
Attachment (V)  
January 24, 1972**

**NEWS RELEASE FORMAT**

This is the basic format for a news release. It should be double- or triple-spaced so that it's easier for editors to handle.

If possible, make original copies for all news media. Use this sheet for your first page and plain bond for additional pages.

When writing a release stick to the models enclosed with this order. If you have any questions, you can call the Director's office for help. Rarely use more than two pages for a release; the press, if interested, will have plenty of questions.



DO 1300.3A  
April 2, 1971

DEPARTMENT OF CORRECTIONS, D. C.  
Office of the Director

*Department Order 1300.3A*

Subject: Public and News Media Relations

1. *Purpose.* To establish responsibilities, policies, and procedures to be followed by Institution, Community Correctional Center and other personnel in dealing with news media and the public.
2. *Definition.* News media includes newspapers, magazines and other periodicals, wire services, radio and television stations and networks, free-lance authors and photographers, and all others whose purpose is to convey information to the public.
3. *Responsibilities and Guidelines.* Superintendents, Community Correctional Center Administrators, Executive Staff, and other employees are involved in and responsible for good news and public relations within their areas of authority and responsibility. The Office of the Director has overall responsibility for the conduct of public and news media relations. The Department's Public Information Officer has been delegated the authority to coordinate these programs and is the key advisor to the Director in these matters. However, with the rapid expansion and changes occurring in the Department more staff will and must be involved in public and news contacts.

The essential elements are that everyone involved, (Superintendents, Community Correctional Center Administrators, Executive Staff and others), deal honestly and forthrightly with the news media and public and do so by being consistent with Department programs and policy. The Public Information Officer will open and expand lines of communications between the Director's Office and other elements of the Department. It is im-

perative that communications work both ways—from and to the Director's Office.

#### **4. Policies.**

a. Information about an inmate that is a matter of public record will be provided to any person who makes a legitimate inquiry during normal business hours. Questions concerning "legitimate" shall be referred to the Public Information Officer. Such information usually shall be limited to the inmate's name, offense for which convicted, length of sentence, date of sentencing, date of arrival or transfer, parole eligibility date, and date of expiration of sentence.

b. Contents of inmate files, except for the data in paragraph (a) are confidential. Legitimate requests from the news media for additional information about individual inmates shall be referred to the Public Information Officer in the Director's Office.

c. Representatives of the news media are encouraged by this Office to visit Department institutions, and other facilities for the purpose of preparing reports about institutional facilities, programs and activities. News representatives calling institutions should be advised that such requests must be approved by the Office of the Director through the Public Information Officer for visits. Usually, staff members from the institution will be designated to serve as guides. Such staff members may respond to questions about facilities, programs and activities but should refer all questions about policy and about individual inmates to institutional administrators.

d. Interviews with individual inmates may be permitted after written request to the Director and after an inmate agrees in writing on attached Information Release Form (see Attachment I). This kind of interview is distinguished from one in which a reporter may be talking with a number of inmates concerning a story about the institution or one of its programs. In such cases, agreement on the "ground rules" will be between the Superintendent and the reporter(s). If there is any question, the Public Information Officer is available for advice.

The Public Information Officer is also available for advice on handling of news media during escapes or other disturbances but it is the basic responsibility of the Superintendents or Community Correctional Center Administrators to make the announcements to the press. Follow-up reports in writing with copies of the release must be sent to the Public Information Officer.

e. Inmates have the right not to be photographed. News representatives must be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged but, if taken, releases must be signed by the inmates. (See Attachment I.) In cases of escape, official photos will be made available to the press.

f. News representatives may visit business establishments which employ work releasees; however, such requests should be submitted to the Associate Director for Community Services or Youth Services so that the permission of the employer is obtained in advance. The rules outlined in paragraphs (d) and (e) above apply equally in the work release situation.

g. Announcement of escapes, disturbances, accidents, and fatal or severe assaults should be made to local news media as promptly as possible by the Superintendent and others or by staff members designated by them. It is advisable to prepare a statement for possible release by telephone or messenger to all media, briefly stating the facts. A telephone report, followed by a written report, must be made to the Office of the Director immediately after an incident occurs. (See Attachment II.)

h. Death of an inmate by natural causes normally is not newsworthy. However, upon the death of an inmate who has attained national notoriety, the procedure outlined in paragraph (g) will be followed. (See Attachment III.) Other deaths occurring in Department facilities also make news; for example, those resulting from assaults on inmates or officers involved in law enforcement. Consequently, great caution should be used in reporting these. No comment should be made that would jeopardize either the possible defense or prosecution. If

there is any question, it is best to check with the Public Information Officer.

i. All announcements related to Department policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Office of the Director. Media inquiries on such subjects should be referred to the Public Information Officer.

j. Copies of news releases issued by mail, messenger or telephone, should be sent to the Public Information Officer along with a distribution list. Clippings or summaries of newscasts should accompany these. Copies of releases and other materials issued by the Director's Office will be sent to the Executive Staff, Superintendents, and Community Correctional Center Administrators. Copies of all photographs also should be sent to the Public Information Officer together with the necessary identification and releases, if necessary.

k. Department policy and programs will be announced only by the Office of the Director. Members of the Executive Staff may make announcements about programs but they must be cleared through the Public Information Officer prior to release.

#### **5. *Methods.***

a. Spot news, routine news and feature news which is cleared through the Public Information Officer will be prepared, printed and disseminated by Superintendents and others. A basic media list is attached as well as telephone numbers. (See Attachment IV.) Superintendents and others should add any media they feel necessary to the basic list. These additions should be reported to the Public Information Officer.

b. Fairness in dealing with the press is essential. Each member should get the same information concerning news released by Superintendents and others. However, if a reporter develops a story on his own, his "scoop" should be respected.

6. *Cancellation.* DO 1300.1 dated August 10, 1956, and DO 1300.3 dated November 2, 1966, are hereby cancelled.

7. *Effective Date.* This Order is effective upon receipt.

/s/ Kenneth L. Hardy  
KENNETH L. HARDY  
Director

DISTRIBUTION: "A" & "B" plus  
President, Lodge 1550, AFGE  
Secretary, Lodge 1550, AFGE

DO 1300.3A  
Attachment (I)  
April 2, 1971

**DEPARTMENT OF CORRECTIONS**  
**District of Columbia Government**

**INFORMATION RELEASE**

**Date:** \_\_\_\_\_

I agree to the use of my picture and statements in (on) (*Name of publication, radio or TV station*) with the understanding it (they) is (are) to be used solely for informational or educational purposes. No use of it (them) may be made for commercial purposes, nor may it (they) be otherwise exploited.

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cc: Director  
Superintendent  
Inmate file  
Media



DO 1300.3A  
Attachment (II)  
April 2, 1971

DEPARTMENT OF CORRECTIONS, D. C.

ESCAPE RELEASE FORMAT

(Number) inmate(s) escaped (date and time) from (institution), (official), reported.

He (they) *briefly and factually describe the method of escape if it is known. Do not speculate. If it is not known, simply say the matter still is being investigated and refer questions to the Director's Office.*

(Official) said escape procedures were put into effect immediately and local and area law enforcement agencies have been notified.

The escapees are:

(List the names, offenses for which convicted, length of sentence, date of sentence, date of commitment or transfer, parole eligibility date, and date of expiration of sentence for each escapee.)

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(Do not use the following in dealing with the news media.)

It is imperative that a copy of this report be on the Director's desk by 8:00 a.m. the day following the escape unless it occurs during the normal work day, in which case it should be sent to the Director's desk immediately.

DO 1300.3A  
Attachment (II)  
April 2, 1971

DEPARTMENT OF CORRECTIONS, D. C.

CAPTURE RELEASE FORMAT

(Official and institution) reported the capture of (number) inmate(s) who escaped (date).

The (agency which made the capture) apprehended (number, or him or her) at (location) on (date). (Then describe briefly and factually the circumstances of the capture).

The inmates who left (institution) on (date) were:  
(list information detailed in DCDO 1300.

DO 1300.3A  
Attachment (III)  
April 2, 1971

### OBITUARY RELEASE FORMAT

(This is only a basic obituary format. It should be used only when a well-known, "notorious" inmate dies in an institution. It also may be used to announce the death of a staff member.)

(*name, age*) died (*date*) following (a *long, short*) illness. (Or if true) as a result of wounds (injuries) suffered as a result an escape attempt, riot, fall, industrial accident (or whatever the facts are)

He had been confined at (*institution*) for (*time*). He was sentenced (*date*) for (*crime for which convicted*).

During his stay at \_\_\_\_\_ he (here list any major positive contributions the inmate may have made. There is little need to add anything else since the news media likely will have nearly complete information on the inmate.)

In the case of employees add:

Date of birth and place

Length of service

Career facts, including promotions, awards, citations

Publications, if any

Educational and other employment background

Date of marriage and to whom and where. It usually is advisable to use only his last marriage.

Number and names of children, and number of grandchildren

Professional and social affiliations.

Above all, check all the facts with the family. If all the information is not available, use what you have.

DO 1300.3A  
Attachment (IV)  
April 2, 1971

## NEWS MEDIA

When calling in a news release, ask for the city desk in the case of newspapers or the news desk in the case of radio or TV. Sometimes the operator will ask if you want radio or TV news. Usually, ask for the TV news desk. The reporter to whom you give the story may sometimes ask if you'll agree to being recorded. Go ahead and do it, unless you have "mike fright." In that case, ask someone else to do it. All you have to do is read the release.

Frequently, reporters will ask for more details and speculation. Don't speculate, but give any additional facts you may have. If things get too hot call the Public Information Officer for guidance. Above all, keep all who should be informed.

### Newspapers:

Post—223-6000  
Star—543-5000  
News—347-0411

### Television:

WMAL—686-3020  
737-2900  
WTTG—244-5151  
244-3474  
WTOP—244-5678  
WRC—362-4000

### Radio: (Partial, but usually interested)

WAVA—522-1115  
Metromedia—244-6220  
WRC—362-4000  
WMAL—732-2976  
WUST—462-0011

Public Information Officer—Lorton Operator

**PUBLIC INFORMATION SERVICE  
D. C. DEPARTMENT OF CORRECTIONS**

**KENNETH L. HARDY, Director**

**[SEAL]**

**L. B. Anderson  
Public Information Officer  
629-3533**

**Superintendent's name  
Telephone number**

**DO 1300.3A  
Attachment (V)  
April 2, 1971**

**NEWS RELEASE FORMAT**

This is the basic format for a news release. It should be double- or tripled-spaced so that it's easier for editors to handle.

If possible, make original copies for all news media. Use this sheet for your first page and plain bond for additional pages. The Public Information Office will supply you with this masthead for your releases.

When writing a release, stick to the models enclosed with this order. If you have any questions, you can call the Public Information Officer for help. Rarely use more than two pages for a release; the press, if interested, will have plenty of questions.

DEPARTMENT OF CORRECTIONS, D. C.  
Office of the Director

1300.3  
DCDO 21-2

November 2, 1966  
Index: Broad Admin-  
istration

**REQUEST FROM PUBLIC INFORMATION MEDIA**

1. **PURPOSE.** This policy Statement establishes responsibilities, policies and procedures to be followed by institutional personnel in dealing with inquiries by representatives of the press.
2. **DEFINITION.** The press includes newspapers, magazines, and other periodicals, wire services, radio and television stations and networks, free-lance authors and photographers, and all others whose purpose is to convey information to a public audience.
3. **RESPONSIBILITIES.** The Superintendent of each institution shall be solely responsible for the contacts with the press. In his absence, the Acting Superintendent shall assume this responsibility. Other staff members shall refer all press inquiries to the Superintendent.
4. **POLICIES.**
  - a. Information about an inmate that is a matter of public record will be provided by or at the direction of the Superintendent to any person who makes proper inquiry during normal business hours. Such information shall be limited to the inmate's name, offense for which convicted, length of sentence, date of sentencing, date of arrival or transfer, parole eligibility date, and date of expiration of sentence.
  - b. Contents of inmate files, except for the data enumerated in paragraph (a) above, are confidential. Legitimate requests for additional information about individual inmates shall be referred to the Director's Office.



- c. Representatives of the press should be encouraged to visit Department institutions for the purpose of preparing reports about institutional facilities, programs and activities. Press representatives should be advised to make advance appointments for visits, and institution staff members should be designated to serve as guides. Such staff members may respond to questions about facilities, programs and activities but shall refer all questions about policy and about individual inmates to the Superintendent.
- d. Press representatives should not be permitted to interview inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted on approval from the Director's Office with inmates whose identity is not made known, if it is limited to the discussion of institutional facilities, programs and activities.
- e. Inmates have the right not to be photographed by the press. Visiting press representatives should be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged but, if taken, releases should be signed by the inmates. In cases of escape, official photos will be made available to the press.
- f. Press representatives may visit business establishments which employ work releases, if the permission of the employer is obtained in advance. The rules outlined in paragraphs (d) and (e) above apply equally in the work release situation.
- g. Announcements of escapes, disturbances, accidents and fatal or severe assaults shall be made to local news media as promptly as possible by the Director or by a staff member designated by him. It is advisable to prepare a statement for possible release by telephone or messenger to all media, briefly stating the facts.
- h. Death of an inmate by natural causes is not normally newsworthy. However, upon the death of an

inmate who has attained national notoriety, the procedure outlined in paragraph (g) above will be followed.

- i. All announcements related to Departmental policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Director's Office. Press inquiries on such subjects shall be referred to the Director.
- j. Clippings from local media relating to institutional activities shall be collected and forwarded to the Director as part of each institution's quarterly report.

/s/ Kenneth L. Hardy  
KENNETH L. HARDY  
Acting Director

DEPARTMENT OF CORRECTIONS, D. C.  
Office of the Director

1300.1  
DCDO 11-7

August 10, 1956  
INDEX: Broad Administrative Action All  
Institutions

*Information to Press and Public:*

Permissible information for release to press.

Reference is made to Basic Regulation No. 11 in the Personnel Handbook "Release of Information". This regulation as viewed and reflected upon over years of experience is now interpreted as too rigid. Therefore, you are hereby directed to inform the members of your staff that anyone inquiring with reference to an inmate may be provided with the following basic information.

1. Whether or not the person is in custody.
2. The charges pending against him.
3. The amount of the bond in each case, if any.
4. The status of each case, including the sentence, if any.

The above is the maximum information which may be given in all cases without referral to the Director. The policy should continue, of course, that we will provide all reasonable information to official agencies with regard to an inmate or his record. However, inquiries made by a non-official source beyond the maximum which may be given to all inquirers should be referred to the Resident Superintendent for handling.

/s/ Donald Clemmer  
DONALD CLEMMER  
Director

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST Co. and BEN H. BAGDIKIAN,  
PLAINTIFFS

v.

RICHARD G. KLEINDIENST, Acting  
Attorney General of the United States

and

NORMAN A. CARLSON, Director,  
United States Bureau of Prisons, DEFENDANTS

PLAINTIFFS' MOTION TO RE-OPEN RECORD  
FOR RECEIPT IN EVIDENCE OF  
ADDITIONAL EXHIBIT

The plaintiffs, by their undersigned counsel, hereby move the Court for an order (1) re-opening the record of the hearing of March 23, 1972, herein for the purpose of receiving in evidence the exhibit attached to the affidavit of March 28, 1972, of plaintiff Bagdikian which is attached in support hereof, and (2) receiving the said exhibit in evidence. As grounds herefor, the plaintiffs state, as more fully appears from their memorandum filed in support hereof, that:

1. The said exhibit is a copy of one of a regular series of "Director's Letters" sent by defendant Carlson, Director of the Federal Bureau of Prisons, to the chief executive officers of all federal institutions under his administration and has attached to it a proposed "Policy Statement", as of January 13, 1972, purporting to authorize, under prescribed limitations, interviews by journalists with inmates of the institutions.

2. As appears from the Bagdikian affidavit attached hereto, the said exhibit was read over the

telephone, almost in its entirety, to Mr. Gerald Farkas, the Bureau's Public Relations Director, and was by him confirmed as an accurate copy of the letter and policy statement which had in fact been sent out on January 13, 1972, to the chief executive officers of the various institutions.

3. The exhibit shows on its face its clear relevance to the issues litigated at the hearing of March 23, 1972, and now before the Court for determination.

4. Counsel for the plaintiffs, on March 28, 1972, informed Assistant United States Attorney Michael Katz by telephone of their possession of the exhibit and suggested that Mr. Katz, after verifying through Mr. Farkas the accuracy of the copy, join counsel for the plaintiffs in a meeting with the Court to offer the exhibit in supplementation of the record herein. Counsel urged Mr. Katz to respond without delay, in view of the desire of all parties for the speediest possible adjudication of the issues. Mr. Katz called back very shortly thereafter and informed counsel for the plaintiffs that he considered the exhibit to have no relevance to the issues before the Court and, therefore, would not join the plaintiffs in a meeting with the Court for submission of the document.

Respectfully submitted,

**WILLIAMS, CONNOLLY &  
CALIFANO**

By /s/ Joseph A. Califano, Jr.  
**JOSEPH A. CALIFANO, JR.**

/s/ Charles H. Wilson, Jr.  
**CHARLES H. WILSON, JR.**

/s/ Richard M. Cooper  
**RICHARD M. COOPER**  
1000 Hill Building  
Washington, D. C. 20006  
638-6565  
**Attorneys for Plaintiffs**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST Co. and BEN H. BAGDIKIAN,  
PLAINTIFFS

v.

RICHARD G. KLEINDIENST, Acting  
Attorney General of the United States

and

NORMAN A. CARLSON, Director,  
United States Bureau of Prisons, DEFENDANTS

AFFIDAVIT

DISTRICT OF COLUMBIA ss:

BEN H. BAGDIKIAN, being duly sworn deposes and says:

Being in possession of the attached exhibit, I telephoned Mr. Gerald Farkas, Director of Public Relations for the Federal Bureau of Prisons, to determine whether the exhibit is an accurate copy of a letter sent by Norman A. Carlson, Director of the Federal Bureau of Prisons, to the personnel mentioned in the exhibit. I told Mr. Farkas what the exhibit purported to be, including the letter, number and date whereupon he told me that he would look for an official copy of the original document for purposes of comparison. After a short period, he returned to the telephone and said that he had the official copy in hand.

I read the entire first page of the exhibit to Mr. Farkas and he verified that the contents of that page are identical to the copy of the original letter in possession of the Bureau. I then read to him verbatim the main body of the policy statement attached to the Director's



letter, in particular, under "*PROCEDURE*" paragraphs A, B, C, D, and E, except for the first 20 lines on page 4, which were paraphrased. He confirmed the identity of these passages with the corresponding passages in his copy.

/s/ Ben H. Bagdikian  
BEN H. BAGDIKIAN

Subscribed and sworn to before me this 28th day of March, 1972.

/s/ Charles F. Paradise  
Notary Public

CHARLES F. PARADISE  
Notary Public  
My Commission expires October 14, 1973

**DIRECTOR'S LETTER NUMBER 31,  
JANUARY 13, 1972:**

**TO: WARDENS, DIRECTORS & SUPT'S:**

In Director's letter #30 of December 27, 1971, I informed you that we were contemplating a revision in our policy concerning inmate access to the press. As I indicated at that time, it is becoming increasingly apparent that unless we make the changes in the policy ourselves, the Federal Courts will in all probability intervene in our operations and require that we make the changes.

I am attaching a draft policy statement for your review and comment. Within the next several days, I am asking all of our wardens and top institutional staff to carefully review the statement and give us their candid comments and reactions. While I realize that many of our staff will not be enthusiastic over the proposed change, I think it is imperative that we approach the subject in an objective manner, and develop a realistic policy which can be lived with and at the same time, protect the 1st Amendment rights of offenders in our custody.

I recognize that this change in policy will have an impact on our operations. Many staff members will question the policy. Therefore, preparation, explanation and interpretation is essential. In making staff aware of the change, I hope you will indicate the Bureau is taking this step in order to comply with recent Federal Court decisions concerning the 1st Amendment rights of inmates. I would also suggest that you point out that several states have already taken this step and they have experienced only minor problems.

While this proposed policy statement is not one which requires consultation with the union, it is a major change and, therefore, I think it would be advisable for you to share a copy of the draft with your Union President and ask him for his comments and suggestions. Again, I want to emphasize the necessity of fully interpreting the reasons for the change in policy; a number of court decisions make it imperative that we do so at an early

date in order to avoid the possibility of the courts directly intervening and making decisions for us.

Please send a memo by January 21 to Gene Barkin giving us your comments and reactions to the proposed policy statement. In addition, please let us know any significant impact you expect this will have on our operations.

/s/ NAC Dtr

**THIS LETTER IS NOT FOR PUBLICATION, BROAD  
DISSEMINATION OR ATTRIBUTION**

## POLICY STATEMENT

**SUBJECT:** Inmate interviews with representatives of the news media.

**POLICY:** The Bureau of Prisons recognizes the desirability of affording inmates reasonable access to the news media. The contacts, in a prison setting, must be regulated to insure the orderly and safe operation of the institution.

**PROCEDURE:**

**A. Eligibility:** This policy statement applies to the news media, which is defined as follows.

A newspaper entitled to second class mailing privileges; a news magazine of general distribution; an international news service; a radio or television network or station.

**B. INMATE INITIATION:** An inmate may request to write to or talk to a representative, specified by name or title, of the news media. Correspondence to a newsman will be sent as special purpose mail, unless the institution is aware that the addressee in the past has failed or refused to abide by the Bureau's regulations on inmate interviews. This correspondence will be inspected, solely to insure that there is no contraband enclosed, and that the mail is not being used to contact unauthorized correspondents. In each instance of refused correspondence, the inmate will be advised of the reason and that he may contact another news media representative if he desires. The Executive Assistant to the Director will be fully advised. If a newsman responds to an inmate that he wishes to conduct a personal interview at the institution, this will be permitted subject to the general rules below.

**C. NEWSMAN INITIATION:** A representative of the news media may request to correspond with or interview a particular inmate. The request should be directed to the Chief Executive Officer of the in-

stitution. The newsman will be advised of the Bureau of Prisons regulations and will be asked to indicate that he agrees to them. The intended subject of the interview will be given, and the request shall be discussed with the inmate, to see if he agrees to the correspondence or interview. If the inmate wishes to proceed, he will so indicate in writing, and the request will be approved, subject to the following limitations and regulations.

Correspondence between newsmen and inmates will be sent as special purpose mail. It will be inspected, to insure that there is no contraband enclosed, and that the mail is not being used to contact unauthorized correspondents. Correspondence and interviews may be disapproved, if the institution is aware that the addressee in the past has failed or refused to abide by the Bureau's regulations on inmate correspondence or interviews at any institution, or if the newsman does not agree to the conditions required by the Bureau. In case of violation of any law or any Bureau regulation or institution regulations, the correspondence or interviews will be terminated.

**D. GENERAL PROVISIONS FOR INTERVIEWS:** Interviews will be between an individual inmate and an individual newsman. A member of the institution staff may attend the interview in the discretion of the Chief Executive Officer, and will ordinarily tape the entire interview, unless the Chief Executive Officer deems it unnecessary. Any tape so obtained will be kept with the inmates central records for at least two years, and will be played for the inmate or his attorney at his request. The interview will be conducted at a time and place established by the Chief Executive Officer. The media representative may use a tape recorder to record the interview. All material obtained through these interviews may not be copyrighted. It must be made available to all media requesting it after first publication. The interviewer must notify the Chief Executive

Officer of the institution of the date of use of the interview material. The inmate shall not receive any compensation, nor anything of value for his interview. No photographs or film, identifying an individual inmate, may be taken. The institution will provide a photograph of the inmate upon request, and if the inmate approves the release of the photograph. An interview will be disapproved if the inmate is physically or mentally unable to participate. This shall be verified by a medical officer's diagnosis, to be placed in the inmates file, substantiating the reasons for disapproval, as follows.

(1) To grant an interview would be a danger to the inmates health, or to the health or safety of the interviewer; or (2) the inmate is mentally incompetent to give a rational factual statement.

The newsmen shall be notified of this basis for declining the interview. If the inmate is a juvenile, the interview shall be granted only if the juvenile agrees, and there is written consent from his parents or guardian.

The interview will normally be limited to one hour in length. The Chief Executive Officer may approve a longer interview. Each inmate will be limited to no more than two interviews per month. If the Chief Executive Officer determines that interviews are imposing a serious drain on institution resources, interview time for the entire institution may accordingly be limited to five hours per week.

An inmate in segregation status will be limited to one-hour interview per month. An inmate in restricted, holdover, or hospital status may be similarly limited, if it is determined to be necessary to provide proper staff supervision.

In the event of an internal disturbance, the Chief Executive Officer may suspend all interviews. Correspondence authorized under this Policy Statement will not be suspended. During the disturbance, information concerning the current situation will be



released at least twice daily to the news media. When a disturbance occurs, or whenever the frequency for interviews or information reaches a volume which is determined by the Chief Executive Officer to warrant such limitation, a press pool may be established. In this situation, all media shall be notified that selected representatives shall be admitted to the institution to conduct interviews under such guidelines as the Chief Executive Officer establishes. All material generated from such a press pool shall be made available to all media without right of first publication or broadcast. The press pool shall be composed of no more than one representative from each of the following groups. (1) the international news service; (2) the television networks, or outlets; (3) the radio networks, or outlets; (4) newsmagazines; (5) newspapers; (6) all media in the local community where the institution is located.

The representative shall be selected by members of the group. These regulations apply to all inmates in federal institutions. When an inmate has any pending unsolved litigation, interviews shall be approved only following notification to and approval by the prisoners attorney and the U.S. Attorney in the district where the litigation is pending.

Representatives of the media are advised that, in the event that statements naming individual inmates or staff members are made, the institution should be advised of the fact before publication or dissemination. In such instance, the institution shall give all possible assistance in providing background and a specific report on the statement provided by the inmate.

**E. EXCEPTIONS:** Requests for exceptions to the above regulations may be made to the Director. Any disputes as to meaning or application of the regulations will be resolved by the Director.

\* The following is taken from a letter recently received from the Legal Defense Fund, 10 Columbus Circle, New York, New York 10019. "Last week I met with Mr. Carlson and others for the purpose of personally urging appropriate changes in Bureau policies concerning federal prisoners 1st Amendment rights in the areas of mail communication and others. We were advised that some changes are presently under consideration. If they do not, within a reasonable, but short, period of time, make the necessary revisions that the law mandates, we will have no alternative but to go into court. We'll see what, if anything, they come up within the next few weeks.

Again, any problems along these lines should be referred to Mr. Stanley A. Bass of the above address.

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\* This section is not part of the "Provided Policy Statement".

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST Co., *et al.*, PLAINTIFFS,

-vs-

RICHARD G. KLEINDIENST, *et al.*, DEFENDANTS.MEMORANDUM OF POINTS AND AUTHORITIES IN  
OPPOSITION TO PLAINTIFFS' MOTION TO RE-  
OPEN RECORD FOR RECEIPT IN EVIDENCE OF  
ADDITIONAL EXHIBIT*Statement*

Defendants, by their attorney, the United States Attorney for the District of Columbia, hereby oppose plaintiffs' motion to reopen the record herein for receipt in evidence of an additional exhibit, *viz.*, a "Director's Letter" from the Director of the Bureau of Prisons to the chief executive officers of the various institutions under his direction, on the subject of inmate access to the press. The letter, dated January 13, 1972, circulates to the wardens for review and comment a draft policy statement that would have authorized interviews \* between inmates and news media representatives, but would not have allowed confidential written communications, which are permitted under the terms of the policy statement which is in force.

*Argument*

Defendants submit that the proposed exhibit should not be admitted in evidence herein on the ground of irrelevancy. The narrow issue before the Court in this cause is that of whether the Policy Statement which is in force

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\* It should be noted that the interviews would not have been private, as the draft would authorize a staff member to be present, and to record the interview.

and effect is constitutional. That some other policy may have been under consideration, but not eventually adopted, has no bearing on this question. As the Court indicated at the close of the evidentiary hearing, its role is not to select from alternative policies, but to rule on the legality of the one which is before the Court (Tr. 222).

Plaintiffs assert that the Court should consider the Director's Letter because the statement contained therein to the effect that "several states" experienced only minor difficulties in connection with administration of their interview policies "estops" the Bureau of Prisons from adopting a no-interview policy based on "a contrary assumption." (Memorandum in support of motion, pp. 2-3). While the state experience was taken into account in formulating the Policy Statement, it is incorrect to say that Policy Statement was "based on" that experience. In fact, the record shows that it was arrived at largely on the basis of an assessment by the Director, with the assistance of his staff and line personnel, of the problem in the context of the particular nature of the Federal prison system and the make up of its prison population. In addition, plaintiffs' contention, if adopted, would inhibit the normal process of decision-making which is desirable for sound institutional management. The Director's letter on its face is no more than a tentative proposal circulated for review, advice and comment to those whose responsibility it would be to carry it out. In an affidavit attached hereto, Mr. Carlson states not only that this is the case, but also that the statement in the Letter respecting the state experience was based on limited staff contacts between personnel of the Bureau of Prisons and of certain state correctional authorities, and that later further investigation revealed that the statement was not an accurate reflection of the situation.

As to plaintiffs' further contention that the Letter "shows, beyond question, the feasibility of a prison interview policy far less restrictive of First Amendment rights than the defendants' present policy of no interviews," it has certainly not been demonstrated that the proposed policy would have been "feasible." In the affidavit attached hereto, Mr. Carlson states that it was re-

jected because it was ultimately determined *not* to be feasible. Moreover, their conclusion that the proposed policy statement would have, *in toto*, resulted in a less restrictive approach to the problem, is certainly open to debate.

Finally, it is clear that the document plaintiff seeks to introduce is an internal working paper, "an intra-government [document] reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 40 F.R.D. 318, 324 (D. D.C., 1966), *aff'd*, 128 U.S.App. D.C. 10, 384 F.2d 979 (1967), *cert. denied*, 389 U.S. 952. As such, it would not be available to a party in litigation. Indeed, nor would it be required to be disclosed under the Freedom of Information Act, see 5 U.S.C. § 552(b)(5); *Ackerley v. Ley*, 137 U.S.App.D.C. 133, 137-138,\* 420 F.2d 1336, 1340-1341 (1969). The document is no more admissible at trial than it is subject to production or discovery. *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, *supra*, 40 F.R.D. at 323, n. 9., and authorities cited therein. Therefore, plaintiff can be in no better position as a result of his having obtained the document in some unknown fashion than he would be if he were seeking its production by discovery processes. The use plaintiffs now seek to make of the document which contains essentially "deliberations" and proposals which were never finally adopted sustains the wisdom of the exclusionary rule respecting such documents.

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\* Cases or authorities chiefly relied upon are marked by asterisks.

*Conclusion*

For the reasons herein set forth, plaintiffs' motion to reopen the record should be denied.

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Harold H. Titus, Jr.  
United States Attorney

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Joseph M. Hannon  
Assistant United States Attorney

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Michael A. Katz  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that service of the foregoing Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion to Re-Open Record for Receipt in Evidence of Additional Exhibit has been made upon plaintiffs by mailing a copy thereof to their attorney, Joseph A. Califano, Jr., Esq. and Richard M. Cooper, Esq., Williams, Connolly & Califano, 1000 Hill Building, Washington, D. C. 20006, this 5th day of April, 1972.

---

Michael A. Katz  
Assistant United States Attorney

## AFFIDAVIT

District     )  
          of     ) ss:  
Columbia    )

I, Norman A. Carlson, being duly sworn, do hereby state that I am the Director of the Federal Bureau of Prisons, United States Department of Justice. In my capacity as Director, I am responsible for the development and promulgation of the policies which govern the operation of the various institutions which comprise this Bureau.

I further certify that the draft of a proposed policy statement which accompanied Director's Letter #31 dated January 13, 1972, was the result of staffing by personnel of the Bureau Central Office. The proposal was to serve as a vehicle by which the views of our principal staff at institutions would be obtained. It also contemplated an exchange of views with a number of state correctional administrators. The draft was therefore issued prior to a number of meetings and consultations which were intended to be held before a policy statement would actually be promulgated. Therefore subsequent to the Director's letter the following steps were taken:

1. A survey of the views of the Bureau of Prisons top level institutional people.

2. This proposed policy was discussed with a number of state correctional administrators at their Association meeting at Atlanta, Georgia on January 27, 1972.

3. On February 7th and 8th the Wardens of our major adult institutions met in the Washington area to discuss in depth a number of proposed changes including the proposed draft. Reference to the experiences of "several states" in the Director's letter was based upon limited contact by our staff people with staff people in several states.

4. Subsequently I had personally talked with a number of state administrators. This led me to the conclusion that a number of the state policies which allow personal



interviews are within a warden's discretion. That concept was rejected by me.

After the discussions and consultations indicated above, I concluded that the proposed policy was not feasible. Instead the present policy was adopted. In adopting the present policy it was felt that in some respects, although obviously not in all, the adopted policy would afford greater latitude because it provides for sealed uncensored mail to all of the media, whereas the proposed policy statement included a narrower definition of the term "news media" and did not provide for sealed outgoing correspondence. To reiterate the proposed draft was rejected and the present policy was adopted after a further in-depth study essentially for the reasons outlined in my testimony.

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Norman A. Carlson  
Director, Bureau of Prisons

Subscribed and sworn to before me this — day of  
April 1972.

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Notary Public

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[Filed 4/14/72]

Civil No. 467-72

THE WASHINGTON POST CO., ET AL., PLAINTIFF.

*vs.*

RICHARD G. KLEINDIENST, ET AL., DEFENDANT.

NOTICE OF APPEAL

Notice is hereby given this 14th day of April, 1972, that Defendants hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 11th day of April, 1972 in favor of Defendants against said Plaintiffs.

/s/ **MAK**  
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

THE WASHINGTON POST COMPANY

and

BEN H. BAGDIKIAN, PLAINTIFFS

v.

RICHARD G. KLEINDIENST, Attorney General  
of the United States

and

NORMAN A. CARLSON, Director, United States  
Bureau of Prisons, DEFENDANTS

Washington, D. C.  
November 21, 1972

The above-entitled cause came on for further hearing  
before the HONORABLE GERHARD A. GESELL,  
United States District Judge, at 9:30 a.m.

APPEARANCES:

JOSEPH A. CALIFANO, Jr., Esq.,  
CHARLES H. WILSON, Jr., Esq.,  
RICHARD M. COOPER, Esq.,  
Of: WILLIAMS, CONNOLLY & CALIFANO,  
Counsel for Plaintiffs

ARNOLD T. AIKENS,  
MICHAEL A. KATZ,  
Assistant United States Attorneys,  
Counsel for Defendants

[2]

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## PROCEEDINGS

THE DEPUTY CLERK: Civil Action No. 467-72, The Washington Post Company, et al., v. Richard Kleindienst, et al. Mr. Joseph A. Califano, Mr. Charles H. Wilson and Mr. Richard M. Cooper for the Plaintiffs. Mr. Michael A. Katz for the Defendants.

MR. KATZ: Will you also enter the appearance of Mr. Arnold T. Aikens, Assistant United States Attorney.

THE COURT: We ought to change the caption of this case, should we not? Mr. Kleindienst is no more Acting Attorney General. We will just consider that done.

All right, you may proceed, Mr. Califano.

MR. CALIFANO: May it please the Court, we have this morning one witness in addition to the witnesses we mentioned at the pretrial conference. We mentioned at the pretrial conference Mr. Arthur Liman, Mr. John Boone, Mr. Roy Fisher and Mr. Timothy Leland.

I mentioned to Government counsel yesterday that there were three possible depositions we had indicated to the Court we might take after the hearing today.

THE COURT: Yes.

MR. CALIFANO: We will simply put one of those individuals, Dr. Robert Gould, on the stand during the presentation of our case.

THE COURT: Very well, you may proceed.

[4] MR. CALIFANO: I would like to call Mr. Liman. WHEREUPON—

## ARTHUR L. LIMAN

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. CALIFANO:

Q Would you please state your name, address and current occupation?

A Arthur L. Liman, L-I-M-A-N, 135 Central Park West, New York City. I am an attorney, a member of the Bar of the State of New York.

Q Have you ever been a journalist, Mr. Liman?

A No.

MR. CALIFANO: May I mark this for identification Plaintiffs' Exhibit No. 9.

THE DEPUTY CLERK: Plaintiffs' Exhibit No. 9 marked for identification.

(Whereupon, the Bantam edition of the Attica Report was marked Plaintiffs' Exhibit No. 9, for identification.)

BY MR. CALIFANO:

Q Mr. Liman, were you associated with the New York State Special Commission on Attica?

[5] A I was.

Q Would you state your association with that Commission, please?

A I was general counsel of the Commission.

Q What were your responsibilities as general counsel of the Commission?

A My duties were to conduct the investigation for the Commission, to collate, review the evidence with the Commission, to counsel the Commission on its conclusions, to present the witnesses at the public hearing, and to prepare the draft of the report to reflect the conclusions which the Commission reached.

Q Over what period of time did your work with the Commission extend?

A We actually started in November of 1971 and our report was filed on September 13, 1972.

Q During that period of time, how much of your own time did you devote to the work of the Commission?

A It would be at least 2,000 hours.

Q Would you describe the size of your staff and the kind of members you had on the staff and as consultants?

A You dropped your voice with the last part of the question.

Q Would you please describe your staff, the size of the staff, and the nature of the qualifications of staff [6] members and consultants to the Commission?

A We had approximately 36 permanent members at the peak of the Commission's activity. Of these, approximately



24 were attorneys, or investigators, and the preponderance were attorneys. There may have been four or five of the 24 who were not admitted to the Bar. This group of 24 was actively engaged in conducting the interviews and pursuing various investigative leads.

In addition, we were assisted by a complement of some 60 part-time members, assistants to the staff. Most of these were lawyers; some of them were law students; and they worked on a per diem basis in conducting interviews for the staff.

**Q** Did you have any expert consultants other than attorneys?

**A** Yes, we had a psychiatric consultant; we had a pathologist; we had a ballistics expert; we had a consultant on medical services. We listed them in the report. These are the ones that come to mind at this moment.

**Q** Mr. Liman, I show you Plaintiffs' Exhibit No. 9, for identification. Would you please inform the Court what that is?

**A** Well, this is the Bantam edition of the Commission's Report. It is identical with the official report except for the centerfold of pictures, photographs which were released by the Commission but which are not part of the Commission's official report; and the cover was added by Bantam.

[7] **MR. CALIFANO:** We offer Plaintiffs' Exhibit No. 9 in evidence, Your Honor.

(Whereupon, Plaintiffs' Exhibit No. 9 was received in evidence.)

**MR. CALIFANO:** We request the Court to take judicial notice of it.

**THE COURT:** I think I already advised that I would take judicial notice of the report. I have read the report twice. I have also seen the film that the Commission released in which Mr. Liman plays a part.

**BY MR. CALIFANO:**

**Q** Mr. Liman, in the course of your work as the counsel for the New York State Special Commission On Attica, did you conduct interviews with inmates and other persons?

A Yes.

Q Approximately how many interviews were conducted?

A Three thousand.

Q How many of these were with inmates?

A Sixteen hundred.

Q To your knowledge, has there ever been a project which interviewed as many inmates as this in a study of a prison?

A Insofar as we could determine, no.

Q How did you develop your interviewing program? Would you please describe that for the Court.

[8] A Well, we started with the goal of attempting to see every person who had some personal knowledge of either the conditions at Attica before the uprising, or the facts of the uprising, or the police action to put down the uprising.

We planned from the outset to see each person privately, without anybody present but a Commission member or a staff member.

We met in November before embarking on the interviews, with groups of correction officers and inmates at Attica, selected at random, to explain to them our mission and the techniques that we intended to use. There were questions, particularly by the inmates, at that time in these groups about what steps we intended to take to insure that the interviews would be confidential and would not be overheard by the administration, since they would have to be conducted on prison premises. We told them that we would work that out so that they would have privacy in speaking to us.

Following this, I, personally, began interviewing certain inmates to attempt to develop a format of interview, to see what the problems were in speaking to inmates, how long interviews would go, what were sensitive areas, all with a view toward developing a form of outline that could be used by the staff as it grew.

Out of this experience of interviewing inmates individually, we developed a questionnaire, an outline, really; [9] and at that time we began the interviewing of inmates, one-by-one, for the whole institution.

Now, we were provided by the Attica officials with space on the top floor of the infirmary that consisted of over a dozen separate rooms. Staff members would report to the third floor; inmates were brought there, in accordance with their institutional number, starting with the lowest number first; so that we saw the oldest inmates, the inmates who had been in Attica the longest first.

They were brought in; sat with a staff member; nobody was present other than the inmate and the staff member; and the interview was conducted. The staff member would note down the substance of what the inmate said, where pertinent.

When he finished with the interview, another inmate would be brought in. And we followed basically the same procedure with correction officers, state troopers, National Guardsmen, seeing them on an individual basis, without any surveillance by persons outside of the Commission.

Q What was the objective of the interviews?

A The objective of the interviews was to determine what were the conditions at Attica, what were the events that led to the uprising, what happened during the uprising, why did the negotiations fail, what happened during the police assault, were there any reprisals afterward, and what were the conditions at Attica at the time that we were conducting our interviews.

[10] That was, in substance, the mandate of this Commission.

Q Mr. Liman, just for the record, would you clear up what you mean by staff member in your prior answer?

A I mean by staff member a member of the staff of the New York State Special Commission On Attica.

Q Mr. Liman, did you conduct group interviews?

A We had several group interviews in circumstances where the inmates refused to be seen alone.

Q Were they as satisfactory for your purposes as the individual private interviews?

A No.

Q Why not?

A We found that in the group interviews the inmates tended to give us rhetoric, rather than facts; and that we were experiencing virtually the same phenomena that the

observers and press that entered the D Yard during the uprising had faced, namely, that in the interest of showing solidarity, inmates were making speeches to us rather than confiding what I knew in many cases to be the fact.

I should add that the basic problem in conducting interviews at a prison is that it is a society in which inmates face sanctions and rewards not just from the administration but from other inmates; and that when an inmate sees you in private, he will tell you things about the administration that may not only be unfavorable but may in many cases be favorable. [11] I found that when we saw them in group, there was a tendency to say nothing favorable about the administration and instead simply to make a speech about how horrible conditions were. In fact, many of the inmates who would say this in group would say something different when they were seen alone.

Q Did you, yourself, conduct interviews; and if so, about how many?

A Well, I conducted the initial interviews that led up to our technique. I conducted interviews after that throughout the period that we were conducting them on a spot basis; and I would estimate that of the 1600 inmate interviews that we conducted, I must have conducted at least 75. That is, of inmates. I also conducted interviews of correctional officers and others.

Q Do you believe that you obtained from confidential and private interviews information that could not have been obtained in other ways?

A Oh, yes.

Q Do you have any examples of that, Mr. Liman?

A Well, there are examples throughout the report. If you want me to, I can enumerate them rather briefly.

Q Just a couple, yes.

A In the section on prison conditions, I think that the extent of racism was something which we got more perception of from the private interviews than we got from the public and group interviews. In particular, inmates were more willing to [12] talk about racism, not simply by the administration but also racism among inmates; whereas, when they were interviewed in the presence of

other inmates, they would ignore the racism by inmates altogether.

The presence of homosexuality, and both forcible and consensual, was a subject on which inmates appeared to talk more freely when they were in a private interview than when they were in group or when they were talking publicly.

There is something which is not stressed in our description of conditions because we found it not to be a major factor at Attica, and that is the question or the issue of physical brutality toward inmates. The press, before this investigation, had played that up as the major grievance at Attica. We found, when we talked to inmates privately, that the incidence of physical confrontation between officers and inmates was rather limited, and that the real grievance was not about those incidents, but rather about what they would feel was a form of psychic repression, depriving people of their manhood. Therefore, I think a lot of the myth about physical beatings was dispelled.

We were able to ascertain the extent of tension at the institution, the role of groups at the institution before the uprising. We were able to ascertain the method that the officer, who died during the taking of the prison by the inmates, had died. We were able to ascertain the extent to which inmates [13] ended up in the Yard, either through fear or through compulsion by others, as opposed to acts of volition by themselves.

In general, when talking publicly, particularly during the uprising, the inmates said that this was a great act of voluntary, concerted action; whereas, in privacy, you got a very different picture of the circumstances under which people entered the Yard.

We were able to obtain the details of the reprisals that took place after the uprising. That was a subject on which inmates were very reluctant to testify publicly, when we had our public hearings, because of fear of reprisals from the Parole Board or other bodies. Not that I am saying that they would have taken place, but the inmates feared they would take place.

We were able to ascertain the fact that a majority of the inmates really were prepared to accept the 28 points,

but for various reasons never were willing to express themselves on that in the Yard. We were able to detail what the factors were that led them to remain silent.

We were also to ascertain the role of the security guard at the uprising. We were able to ascertain the role that terror played in the Yard. We were able to ascertain the extent of acts of homosexual rape. We were able to determine the circumstances of the deaths of three of the inmates who died before the re-taking.

[14] We were able to determine the fact that several inmates, including D. L. Barkley, who were rumored to have been killed after the prison was re-taken, actually died during the initial seconds of the police assault. That was one that posed a particular problem, because inmates in group tended to rely on rhetoric, saying that he was murdered after the uprising had ended; whereas, in privacy, some of them, including his friends, were willing to talk about the circumstances of his death.

Above all, we were able to get a glimpse of what we have described as the dehumanizing conditions that existed in the prison which inmates were willing to cite fact about in private interviews; whereas, when you saw them in groups, it was again very conclusory-type statements.

Q Mr. Liman, could you have gotten this kind of information and these kinds of facts by corresponding with the inmates and having them correspond back with you?

A I don't believe that you can by correspondence.

Q Why?

A Well, it is the same reason that I have always found, as a lawyer, that written interrogatories are not as effective as oral cross-examination, in talking to witnesses. Because you don't have the opportunity of an immediate follow-up.

Also, in an institution like Attica, you are dealing with a number of people who are not literate; and you are also, when you submit written questions, running the risk that the [15] answers that you get will not be the answers of that inmate but rather will be the answers of everybody he has talked to, shown the questionnaire to; and that we are getting again a response that reflects peer group pressure, or administration pressure, rather than the conviction of the inmate, himself.



Q Mr. Liman, would you give the Court a sense of how you would define or describe a Big Wheel in prison?

A You have asked me that question before. My impression would be that a Big Wheel would be a leader.

Now, Big Wheel, is not a term that I ever heard at Attica. But I assume that the Big Wheel is a person who commands a following; and they were referred to there as leaders, not as Big Wheels. I would distinguish that from a loudmouth, or person who has a swelled head, who may command no following, but who will sound off at every opportunity.

Q To your knowledge, did your interviews create any Big Wheels at Attica or any leaders at Attica?

A No.

Q Have you stayed in touch with the situation at Attica in a general way since your report was issued?

A Yes. I receive letters from inmates we interviewed. I have spoken to Russell Oswald, the Commissioner, from time to time. I was up at Attica approximately a month after we rendered our report, to see what things were like, and to determine what the reaction was to the report by inmates and [16] correction officers.

Q Did the publication of your report, so far as you know from those contacts, result in the creation of any leaders or Big Wheels at Attica?

A No.

I don't know if you want me to amplify, but the report makes it clear that at Attica there were people who had leadership qualities and they came to the fore during the uprising. We described what it was that these people had in their personalities that led to them coming to the fore. They are the things that you would observe in almost any kind of institutional life. Some of them were superior athletes. Some of them were leaders of the Muslem group, or the various groups that function within the institution. Some of them were superior jailhouse lawyers. These were people whose qualities had been demonstrated before in those respects, who had followings before, and who were called upon when the inmates found themselves in the Yard to play a role as spokesmen.

Q Were press interviews permitted at Attica prior to the incidents that your Commission studied?



A To my knowledge, no.

THE COURT: Are they now permitted, Mr. Liman?

THE WITNESS: Yes, they are permitted under various circumstances; but as I understand the practice today, if a newsman knows the name of an inmate and obtains his consent, [17] he can conduct an interview. I have also talked to some newsmen who wandered through the institution, found an inmate, and were then permitted to interview him.

BY MR. CALIFANO:

Q Were these interviews, to your knowledge, within or without the presence of correctional officials?

A I am not certain, Mr. Califano. It is a relatively new procedure at Attica.

Q I would refer you to Page XVII of the Bantam edition of the Attica Report, where the Commission recommends, and I quote:

"The establishment of regular procedures to assure access of the press to the prisons."

Is that correct?

A That is right.

Q What types of press access are contemplated by that recommendation?

A Well, we said:

"The establishment of regular procedures to assure access of the press to the prisons."

And we go on to describe the fact that prisons had, essentially, been invisible, and that the public was really unknowledgeable and uncaring about the prisons; and what we contemplated, and what we discussed among the Commission, was a continuing access of the press that would provide facts of [18] the type that we developed about prison conditions on a regular basis, as opposed to having that done on a crash basis only after there is some great tragedy.

Since the Commission's experience was that the only interviews that were fruitful for us were those which were conducted privately, we really presumed that the press would be given the opportunity, under reasonable regulations, to see inmates and to question them about conditions.

**THE COURT:** In the course of the work of the Commission, Mr. Liman, was there any contact by you or others in the Commission with judges who had concern one way or another as to what was happening to people that they had committed to this institute?

**THE WITNESS:** Well, not—Judge, it wasn't done on a formal basis, but all of us know a number of judges. I have a partner who went onto the bench. Even before I undertook this position, I had had discussion with judges about the fact that they went through a lot of agony and pain to sentence a person, and then they lost total control over him, once he went to the institution. They even lost knowledge of what was really happening to him there. That was a fact that I have heard for a number of years and it was something that I heard more often when I was on the Commission, simply because people came to me and talked to me about it.

**MR. CALIFANO:** I have no further questions, Your Honor.

[19]

## CROSS-EXAMINATION

**BY MR. KATZ:**

**Q** Mr. Liman, what was the period in which the Attica disturbance took place?

**A** September 9 through 13, 1971.

**Q** And when was the Commission which prepared the report brought into existence?

**A** Well, there are various steps that took place to bring it into existence, but formally, it came into existence on November 15, 1971. De facto, it existed earlier. It was simply that the order hadn't been signed. In New York, the procedure had been to have commissions exist on the basis of a press release as opposed to an Executive Order. We insisted that we get the Executive Order before we conducted our interviews.

**Q** Who was the authority that appointed the Commission?

**A** Technically, the authority was the Governor, under Executive Law, Section 6.

The Governor acted jointly with the legislative leaders in calling upon Chief Judge Fuld, and the presiding Justices of the Appellate Division, to select the nine members of the Commission; and then the Governor, using his power under the Executive Law, under what we call the Morgan's Commission Act, actually gave the Commission its powers.

Q Was the function of Chief Judge Fuld and the Justices [20] of the Appellate Division only to appoint the members of the Commission?

A Just to select them, that is right, and that is all.

Q To whom was the report of the Commission supposed to be made?

A To the Governor, the Legislature and the public, simultaneously.

Q Was the Commission supposed to make certain specific findings and recommendations?

A It was supposed to make fact findings. The mandate was to determine and report on the facts and circumstances leading up to, during and after the uprising.

Q So that the report principally was supposed to be merely a factual account of what occurred at Attica?

A That is not completely accurate. Among the facts that we were to ascertain were the causes of the uprising, and such judgmental questions as whether the Governor should have come, whether the assault was well planned; and I think you get into more than simply narrating facts, when your mandate is that broad.

Q Does everything which is contained in the volume which has been identified as Plaintiffs' Exhibit 9 represent a finding of the Commission?

A Yes, sir, a finding or a conclusion.

Q Were those findings of the Commission subject to the [21] approval of any further authority?

A No.

Q You testified, sir, that you never heard the term, Big Wheel, used by the persons whom you interviewed.

A That would seem—

Q At Attica.

A They not only didn't use it, but having had some exposure to their vocabularies, that would not be part of them. It seems to me to be an old-fashioned word.

Q On the basis of this exposure which you have had to the vernacular of Attica, what other expressions do you know of which could be considered more or less equivalent of the term, Big Wheel?

A I think that the term, leader, is the one that inmates there used. Leader, or they would refer to the person specifically, head of the Muslims.

Q These are individuals who had a following among other inmates?

A Yes, they were inmates who wielded power.

Q And were many of these identified as persons who played leading roles in the disturbance that occurred at Attica?

A I would not feel that that was a fair characterization. Our conclusions were that they played no role in bringing about the uprising; but, as we make clear in the report, they acted as spokesmen during the uprising and during negotiations.

[22] Q So that it is your testimony, sir, that while these inmate leaders may not have precipitated the uprising—

A Did not.

Q —they played leading roles in it, once it occurred?

A They did not, I said, precipitate.

Q That is what I said.

A The uprising. And they played the role of spokesman during the uprising.

Q Do you know whether or not the report, after it was completed, was circulated and read by the inmates at Attica?

A Yes.

Q Now, you have testified, sir, with respect to the current interview policy which prevails at Attica.

Is that based on your personal knowledge?

A It is based on my knowledge of what has taken place there, plus talking to newsmen, as well as having had some conversations with the officials there. But I do not know, as I said before, whether the correction officer is present or not. It is just something that I didn't ask.

Q Do you know whether they have a policy in writing on this subject?

A I suspect that they would, but I don't know.

Q You don't know.

Do you have any knowledge as to whether or not the policy is uniform throughout all penal institutions in the [23] State of New York? Do you know that?

A It is supposed to be but because of the fact that Attica was the scene of this uprising, the press took a greater interest in Attica, they put more pressure on the administration about Attica; and as a result, there have been a number of stories about inmates at Attica, who were interviewed by the press, which you do not find about other institutions.

Q No, my question—

A So I don't know whether it is uniform because my experience with the New York State prison institution is that there was a great diversity in practices which Russell Oswald was trying to make uniform, but how well he succeeded under these pressures, I cannot say.

Q The answer to my question, then, sir, is that you don't know?

A That is right.

Q Now, in your direct testimony, Mr. Liman, you were asked questions with respect to the findings of the Commission to the effect that press access to Attica should be increased.

A The conclusion, that is right.

Q Now, the Commission made no specific findings, did it, with respect to whether or not private interviews between the inmates and the media should be a part of that?

A We did not state any. We did not attempt to go into any details on these matters.

[24] MR. KATZ: Thank you.

THE COURT: Anything further, Mr. Califano?

MR. CALIFANO: One question, Your Honor.

## REDIRECT EXAMINATION

BY MR. CALIFANO:

Q Mr. Liman, I refer you to Page 211, at the bottom of Page 211, and Page 212 of your report which states, and I will read the paragraph:

"Prisons have traditionally been off limits to the press. The admission of newsmen and television cameras to D Yard, not only provided inmates with an unparalleled opportunity to tell the public about prison conditions, but gave them a sense of importance, dignity and power. Inmates realized that they could command national attention only as long as they kept the hostages and that once the uprising ended they would return to the status of forgotten men, subject to all these humiliations of prison life. That feeling, coupled with their fear of reprisals and mistrust of the State, made it almost impossible to persuade them to give up the limelight and return to anonymity."

Mr. Liman, how does that section of the Attica Report compare, or does it, or is it consistent with the recommendation and conclusion of the Commission as far as press access is concerned?

[25] A We thought it was consistent. If you read on, on Page 213, I think we deal with precisely that question. We say:

"The presence of television cameras and the press has a tendency to encourage rhetoric rather than serious concessions. The Commission believes strongly that prisons must be subject to continuous public scrutiny and that the press has a vital role to play in exposing inhuman conditions. But settlement negotiations during an uprising are not the occasion to exercise that function. To maximize chances of agreement, negotiations must be conducted privately without the presence of the press, but with appropriate briefings to the press."

That says it, I think, fully. We felt strongly that the time for the press to exercise its function was not in the middle of an uprising. On the other hand, we feel equally strongly that the press had an essential role to develop the facts of what the conditions in the prison were like, and to do it at a time and in a manner that would not simply evoke rhetoric. To my way of thinking, the only way that can be done is by private interviews where people are not under the pressure of making speeches to please their fellow-inmates or the institutional administrators.

MR. CALIFANO: Thank you, Mr. Liman.

THE COURT: Thank you, Mr. Liman, you are excused.

[26] THE WITNESS: Thank you.

THE COURT: I am going to ask you gentlemen to wait just a minute. I have a sentence I must get out of the way. Counsel have been waiting.

THE WITNESS: Am I excused, Judge?

MR. CALIFANO: Mr. Liman would like to return to New York.

THE COURT: He is excused. You don't want him, do you, Mr. Katz?

MR. KATZ: We will have nothing further of Mr. Liman, Your Honor.

THE COURT: Very well, thank you, sir.

THE WITNESS: Thank you very much, Judge.

(Witness excused.)

(Whereupon, the proceedings were temporarily suspended.)

THE COURT: You may call your next witness.

MR. WILSON: Roy Fisher.



WHEREUPON—

ROY M. FISHER

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WILSON:

Q Sir, would you state your name and place of residence for the record, please.

[27] A My name is Roy M. Fisher. I live at 203 Bingham Road, in Columbia, Missouri.

Q What position do you currently hold, Mr. Fisher?

A I am Dean of the School of Journalism at the University of Missouri.

Q How long have you held that position, sir?

A Since April 1, 1971.

Q Prior to assuming your present position, did you have any training or experience in journalism?

A Yes.

Q Would you please describe your training and experience in journalism?

A In the area of training, I graduated from Kansas State University with a Bachelor's in journalism degree. I was a Neiman Fellow at Harvard for a year, where I studied state and government reporting.

In professional experience, I have been a reporter for two small newspapers in Kansas and Nebraska; and in 1945, I joined the staff of the Chicago Daily News, where I served as a police reporter, a general assignment reporter, political reporter, assistant city editor, city editor, feature editor, assistant managing editor and editor.

Q Would you describe your duties while you were editor of the Chicago Daily News?

A I was the chief news executive on the paper and I had [28] responsibility for the local and national and foreign news reports, as well as the editorial page and the editorial comments and editorial writers.

**Q** How long did you hold the position as editor of the Chicago Daily News?

**A** Five years.

**Q** What period in time?

**A** 1965 to 1971.

**Q** That was immediately preceding assuming the post of Dean of the School of Journalism at the University of Missouri?

**A** Yes.

**Q** Dean Fisher, is there any established system for ranking schools of journalism in terms of quality that you are aware of?

**A** Not particularly except for the accreditation, which the National Council for Education in Journalism accredits about 59 schools of journalism.

**Q** While you were serving as editor of the Chicago Daily News, did you have any responsibility for the hiring and training of personnel?

**A** Oh, yes. I had the final word on all employees in the editorial department.

**Q** In the course of performing that duty, did you find it necessary to develop a basis for evaluating the training and experience of men who applied for jobs?

[29] **A** In the course of the years, I began to form opinions as to the kinds of training that I could expect graduates from various schools to have, yes.

**Q** In the course of forming those opinions, were you able to form any judgment concerning what might be called the top-ranked schools of journalism in this country?

**A** Yes, I think so.

**Q** What conclusions did you draw?

**A** I felt that the most prestigious, most effective schools for training professional reporters would be the University of Missouri, Northwestern, Columbia, Minnesota, perhaps Wisconsin.

**Q** Now, did this conclusion have any bearing on your decision to leave the Chicago Daily News and assume—

**THE COURT:** You can't get him to say that he doesn't run a good school of journalism. You just can't make him do that. Let's get on with it.

BY MR. WILSON:

Q Dean Fisher, is there anything distinctive about the University of Missouri School of Journalism?

A Well, it is the oldest school in the world, and it is the largest from the standpoint of training working press men. There are about 1009 students this semester.

It has the greatest facilities, physical facilities. We operate a commercial television station, an NBC affiliate, [30] which is used as a laboratory for our students. We operate a daily newspaper that circulates through the mid-part of Missouri, a very good commercial newspaper. We operate a radio station, educational radio station, as laboratory facilities for training prospective journalists.

From the standpoint of the variety of sequences, editorial, broadcasting, magazine publishing, advertising, and so forth, we are the most diversified of any of the schools.

From size, we have the largest faculty and perhaps one of the most prestigious faculties and the most cosmopolitan student body. We have students this semester from 49 states and 12 foreign countries. About half of our students are drawn from outside the State of Missouri, and the other half come from the State.

Q You mentioned a commercial television station and radio station and a daily newspaper. Are these produced by the students?

A Yes, the students do the primary production work on the stations.

Q Is the Missouri Journalism School undergraduate?

A It is both undergraduate and graduate. 750 students are undergraduate students and 250 graduate students.

Q What are the students of the University of Missouri School of Journalism taught concerning the techniques of newsgathering?

[31] A Well, we are sort of a hard-nosed school, I guess, if you would classify philosophies of schools. We emphasize the professional skills required for performing assignments in news departments. In the gathering of

news, we emphasize the objective criteria of writing, reporting. We teach our students that the highest standard of their service is to recreate a reality for the reader, to be the conduit of information, not the advocate or the political persuader.

**Q** What if anything are the students at your school taught concerning interviewing as a source or a technique of news-gathering?

**A** Well, there are various sources of gathering news. There are ways of gathering news. We teach them that the closer you get to the original source of the news, the more likely you are able to be to create accurate reality for your reader.

The best source of information is your own experience, a face-to-face observation of an event by a trained reporter. If that is not possible, then a reporter should get as close to that situation as possible. One step away would be to interview someone else who was a participant or observer of the event. Eventually, you get to the point where you use as news sources written accounts of an event or a publicity release. But always one should strive to get as close to the prime source as possible.

**Q** Now, as part of this instruction, are students instructed in how to conduct interviews, and will you go through [32] that process?

**A** Yes, he is taught first he should approach a subject not as an adversary but as someone who seeks to understand what the subject is trying to tell him, and encourages the subject to speak frankly and candidly. He doesn't try to construct the interview but to follow threads that may develop in the course of the interview. He should be receptive, sensitive, almost a sponge, an information sponge, because his ultimate judgment as a journalist is going to be related to the credibility of what he is hearing in the interview. He is going to have to make a subjective judgment as to whether the subject of the interview is believable. Not a clear subjective judgment but it will influence the importance of the story. Newsworthiness of the story. Whether the source is evaluated to be a responsible and correct source.

**Q** Is the opportunity to evaluate the source an important factor in encouraging students to interview?

**A** Very much so. It may make the difference whether a story is played on page 1 or page 36 or isn't played at all.

**Q** Dean Fisher, was it your experience as a working newsman that the accurate and effective reporting of news had a critical dependence upon the opportunity for face-to-face interview?

**A** Very much so.

**MR. KATZ:** I object to the question as leading.

[33] **THE COURT:** Sustained.

**BY MR. WILSON:**

**Q** Dean Fisher, during your experience as a working newsman, did you have any occasion to engage in face-to-face interviews?

**A** Yes.

**Q** Can you relate from your experience any examples where that had a bearing upon your development of a news story.

**A** Well, they are so numerous that one could—every day a reporter interviews people to get information. I suppose one could cite a hundred or a thousand different examples, if he wanted to put his mind to it. There is one particular case that might be interesting in this connection.

It involved a person who had been convicted of a rape and murder of a ten-year-old girl in Illinois, and who had been sentenced to death. He spent ten years in death row, waiting for execution, during which time there were various appeals, and so forth. The processes of law were being carried out.

Eventually the United States Supreme Court held that he had been convicted on perjured evidence and remanded to the District Court; and he was ordered released.

Now, in the process of reporting this incident, this case, we had, of course, from time to time carried articles about the processes of appeal, and so forth. When he came out of the State Penitentiary at Joliet, we thought this would [34] make an interesting and relevant story

for our readers and perhaps would give some insight into the judicial process and, in this case, a miscarriage of justice, as we saw it.

So I assigned one of our reporters to meet this man as he came out of the prison; and he did. Our reporter took him to a Chicago hotel and discussed with him the possibility of our helping him do a story or doing his story of ten years on death row, and the case, itself. He agreed to do so. So our reporter spent several days interviewing this man. In the course of the interview, the reporter became very skeptical about the man's reliability and the story of his own life, as he was telling it, and his involvement or non-involvement in the crime.

I got a call from the reporter one afternoon and he said: Fisher, I wish you would come over and take over the interviewing of this man for a while because I don't think his word is worth the paper we would print it on. So I went over to the hotel and spent two hours on one occasion and three hours on another occasion, perhaps another visit, with the man, and came to the same conclusion that our reporter had. As a matter of fact, I have to this day the greatest reservations about whether that man was innocent of the crime.

So we dropped the interviewing, dropped the story, printed nothing further about him, and canceled the whole project.

[35] Q So it is—

A A decision that came only after we had had a chance to visit, talk intimately with the man for some period of time.

Q And prior to having that opportunity, you thought you had a good story?

A Oh, yes, he was a very sympathetic personality, you know. It looked like this was a case where society had gravely wronged a man.

Q Dean Fisher, you have said that there are too many examples in your own experience to site them in terms of the role played by face-to-face interviews in developing news, is that correct, sir?

A Yes.

Q Are you familiar with any studies that have been done that would tend to confirm your experience in that respect?

A Yes. I read a study recently—

Q Your answer is, yes?

A —about that.

Q Your answer is yes?

A Yes.

MR. WILSON: I ask that this document be marked as Plaintiff's Exhibit No. 10, please.

THE DEPUTY CLERK: Plaintiffs' Exhibit No. 10 marked for identification.

[36] (Whereupon, the study by Gary C. Lawrence and David L. Grey appear in the Journalism Quarterly was marked Plaintiffs' Exhibit No. 10, for identification.)

THE COURT: Dean Fisher, you are talking theory, not practice, isn't that right? You are not talking practice.

If you pick up a daily paper every day, you find reporters writing the most gossipy type of semi-editorialized news articles, without any disclosure of source or reliability or anything else.

You are talking theory, as these young men go out into the business, with their faces washed, and not what happens when they deal with an editor.

THE WITNESS: No, I am talking fact.

THE COURT: Look at our daily papers here in town. Responsible papers, as they are considered, they are full of the most gossipy kind of news: A high official said this. Or: An unknown source said that. Obviously, people who have an ax to grind or they wouldn't talk to the press.

THE WITNESS: These are cases when a reporter is not dealing with the prime source of his news or is dealing through—

THE COURT: They never say the man doesn't know what he is talking about. They say he is a prime source.

THE WITNESS: Well, the reporter is going to, if he [37] is a competent reporter, form some evaluation, some



judgment based upon his own evaluation of the reliability of a news source. He will present the information to the best of his ability based upon his evaluation of the source. It is always an inferior source if one cannot get directly to the prime holder of information. But often, that is impossible. The reporter may be prevented because the prime source does not want to talk, or as a deliberate policy of the administration, it does not want to be identified with a piece of information for some reason, but may well desire to have that piece of information in public circulation.

So there are all sorts of screens and obstacles placed between the reporter and the reality. Whenever—

THE COURT: That is what is involved here, isn't it?

THE WITNESS: Yes.

THE COURT: A regulation that places obstacles in the way of accurate news reporting. That is nothing unusual.

THE WITNESS: Oh, no.

THE COURT: They exist everywhere, don't they?

THE WITNESS: A reporter deals with the best information available to him. We have one of the serious problems of the credibility of the press in this country, which is the fact that the reporter finds it necessary so often to deal with remote sources rather than prime sources.

THE COURT: I don't see what the relevance of this [38] testimony is to the problem I have before me.

MR. WILSON: Your Honor, it is related—

THE COURT: I understand the testimony has relevance in that it says that the most accurate type of news-gathering is by personal interview with people who have direct knowledge of the specific problem under inquiry. But beyond that, which I guess is obvious, what has it got to do with the case?

MR. WILSON: It is directed to the first question specified by the Court of Appeals on remand, Your Honor.

THE COURT: Well but aren't you overlooking the word, "critical"?

MR. WILSON: No, Your Honor.

THE COURT: Aren't you overlooking the word "critical" in the first question? Since at least I have the impression, as a newspaper reader, that most information given by the press is obtained through indirect, oblique and often unqualified sources.

So the word that I thought was important in the Court of Appeals question was "critical."

MR. WILSON: Yes, Your Honor.

THE COURT: And the gentleman just acknowledged usually you don't talk to the prime source. The prime source doesn't want to talk to you.

MR. WILSON: The thrust of his testimony is that the press wishes to get to the prime source and they are obstructed. [39] In terms of proper journalistic training—

THE COURT: I will take judicial notice of that. The press isn't allowed to attend board meetings of The Washington Post. It isn't allowed to attend Cabinet meetings. There are all kinds of places where the press isn't allowed to come. I will take judicial notice of that. There are all kinds of bars to press access in every part of our society, aren't there?

MR. WILSON: Well, there are—

THE COURT: I suppose a newspaperman hears, No comment, a substantial number of times every day.

MR. WILSON: The issue in this case is whether a Government agency can impose an absolute bar.

THE COURT: But he is not talking about Government agencies. His testimony isn't related to the issue I am interested in, and that is the question of the problem of inquiring into situations where the conduct of public officials in public institutions is at issue, and the question of the reliability or unreliability of official pronouncements given by those whose conduct is under investigation.

That is not what you are talking about. You are talking about some kind of a theory, which I don't think is followed in practice in the news business, because of all these obstacles. I don't really think it is moving me along, sir.

MR. WILSON: I will move on, Your Honor.

[40] BY MR. WILSON:

Q Dean Fisher, have you had any experience with reporting about prisons, prison conditions?

A Yes.

Q Would you describe your experience, please?

A On several occasions I visited the State Penitentiary in Joliet, and with the warden went through the prison; and I wrote stories relating to their rehabilitation programs, their various facilities for rehabilitative training, and other conditions in the prison.

Q Was the purpose of your visit to develop stories about rehabilitation programs?

A Yes, that is correct.

Q Now, what procedure was followed when you visited there, the State Penitentiary?

A Well, I was escorted by the warden to various departments of the prison, and we watched the printing press, and the bake shop, and the various activities there, the school; and I visited with the persons in charge of the operation; and talked with some of the prisoners about what they were doing and their program.

Q You say you talked to prisoners. Did you talk to them, interview them privately?

A No, as we would go into a room, if there were some prisoners there, I would simply begin a conversation with them.

[41] MR. KATZ: May we establish when this was he visited Joliet?

THE COURT: Yes.

BY MR. WILSON:

Q When was this, Dean Fisher?

A I can't give you the exact time. It was when Warden Ragan was warden at Stateville; and this must have been 15, 20 years ago.

Q Did you have the opportunity for private, confidential interviews with inmates during these tours?

A Not those tours, no.

Q Did you leave the prison after your visit with a feeling that you had obtained a full understanding of the conditions inside?

A Well, the visit was satisfactory from the standpoint of what we went out to do, which was to do a story about new rehabilitation programs that were under way. I did not go beyond that, the scope of that story, in our discussions with prisoners. I had no occasion to.

Q I see.

Dean Fisher, I will read two sentences from the brief that the Government has filed in the Court of Appeals in this case, and then ask you some questions based on those two sentences.

THE COURT: What page of the brief are you talking [42] about?

MR. WILSON: Your Honor, it is the bottom of Page 25 and up on the top of Page 26.

I quote:

"The lack of any abridgment of the freedom of the press is understood by the fact that the Bureau has carefully provided for a comprehensive system of reasonable alternative under which the press has full opportunity to inspect prisons and to learn about and report on prison conditions and prisoners' grievances. Thus, under the Bureau's policy statement, press representatives may visit, inspect and photograph Federal prisons; inmates are permitted to directly inform press representatives of prison conditions and prisoners' grievances through sealed, uninspected mail, written and delivered promptly to any press representative; press representatives are permitted to initiate correspondence with particular inmates or to follow up on mail received from inmates by writing to particular inmates in letters which are inspected only for contraband or matters inciting illegal action; and prison officials are required to give all possible assistance to press representatives in providing background and a specific report on inmate complaints."

Dean Fisher, if you wished to do a story on prison conditions or prisoners' grievances while you were a working [43] newsman, would you feel that you could develop a fair and accurate story if you were limited to the

sources of information itemized by the Government in that passage of the brief?

A No.

Q Why is that, Dean Fisher?

A Well, if one is to do a story on prisoners' grievances, he has to be in a position to evaluate the credibility of the prisoners' statements. If he is restricted to corresponding by mail, it would be practically impossible to pursue a line of questioning through the mail with a prisoner that could effectively give the reporter a basis for making such an evaluation.

When you cannot make an evaluation of the reliability of your correspondence, you either have to take it at face value or you turn it down. What would be likely to occur in this situation, if I received a letter from a prisoner complaining about such-and-such, I would take this letter and then I would go to a prison official, and I would say: Prisoner A says this. What do you have to say about it?

In the absence of any basis for making my own observation and judgment of the grievance, I would present this story somewhat as a debate between the prisoner and the warden; give the warden equal time, so to speak, and the prisoner equal time. That would really be the only way a reporter could do it.

However, if I could go in and talk to and [44] cross-examine the prisoner and establish a basis for my own judgment, then I could say with conviction to my editor that: I have talked this out with the prisoner and I either believe him or I don't believe him or I partly believe him. And this would form the basis then of the treatment of that story in the newspaper.

Q Is there any reason why you would not simply want to rely upon the information provided you by prison authorities?

A Well, if they are the accused person, it is like going to a defendant and saying: Well, are you right or wrong? There are times when prison officials are wrong. Properly, the press should be skeptical about performances of any public official, if he has a complaint.

THE COURT: Don't you fulfill the role of the press if you say: This is what the warden says and this is what the prisoner says.

THE WITNESS: If that is all that is available to you, yes.

THE COURT: Isn't that the role of the press, to report points of view in a controversy?

THE WITNESS: No, the role—the press has got to make some subjective judgments as to the importance of the accusation, the probable accuracy or inaccuracy of the accusation.

THE COURT: Because if you believe the prisoner, you would be more apt to go on some kind of a crusade about the [45] problem, is that what you are saying to me?

THE WITNESS: No.

THE COURT: I don't mean crusade in the wrong sense but I mean, if you believe there are abuses and you are satisfied there are abuses, then you would give them more attention than if the matter sort of sat in equipoise, or would you?

THE WITNESS: I don't think I could answer that. I am not sure—

THE COURT: That has to do with the whole role of the press, Mr. Fisher. Why can't you answer that?

Is the role of the press to report or is the role of the press to reform or is it both?

THE WITNESS: Both roles, of course, are involved in the responsibility of the press. But our primary role is to report. But we have a responsibility in evaluating the information that comes over our desks and ascertaining whether it is sufficiently credible to pass on to our readers or is it so blatantly incorrect as to file it in the wastebasket. Most information we get, we file in the wastebasket.

When we make a judgment that it is newsworthy, there is some credibility, then we put it in the newspaper. It is when we fail to go behind a piece of information and make that evaluation that the press is open to the charge of being unbelievable. Unfortunately, sometimes you can't go behind it.

**THE COURT:** When I get a letter from a prisoner [46] telling me that he has been hurt or abused or assaulted, and I get a large number of those letters as every Judge of this Court does, our technique is to have a lawyer go and take a look at the matter by talking to the prisoner.

**THE WITNESS:** Our technique would be to assign a reporter to go and talk to the prisoner.

**BY MR. WILSON:**

**Q** Dean Fisher, are you aware of any policies that exist on newspapers with which you were associated relating to the use of information supplied in writing?

**A** Yes. The policy in our own newspaper was that we never accepted written communications at their face value, unless we could ascertain the reliability of the source and of the authenticity of this communication.

For example, when we receive an announcement of a wedding, a scheduled wedding, at the society desk, this announcement is never printed until the society reporter calls the person involved and verifies it.

Obituaries, the most elementary kind of news announcements that come into the paper, if there is any possibility of embarrassment—oh, I suppose, if we got a letter to the editor about some frivolous thing, about the weather, or something like that, we might just print it without checking it out.

**THE COURT:** Isn't that because of the libel laws?

You don't have any problem. You can libel a prison [47] official all you want under *Sullivan v. New York Times*. There isn't any restraint on your libeling him.

**THE WITNESS:** It is part of any reporter's prudent behavior.

**THE COURT:** Apart from the libel question?

**THE WITNESS:** Apart from libel. It is axiomatic in a news room that you check out the source of your information. Even a financial statement released by a recognized public relations firm, arriving at the business desk of the *Daily News*, the first thing the reporter does is to call the originator of that release and verify it.



We are struggling in the press constantly to maintain credibility, to establish and maintain credibility. These are simply prudent things, procedures that we take routinely, in an effort to do that.

BY MR. WILSON:

Q Dean Fisher, I asked you earlier if you were aware of any studies that had been done that would confirm your experience on the importance of face-to-face interviews.

I show you now Plaintiffs' Exhibit No. 10, for identification, and ask you if you can identify it?

A Yes, I can.

Q What is it, sir?

A It is an article that appeared in the Journalism Quarterly. This is a scholarly journal, published by the [48] Association for Education in Journalism. It appeared in Volume 46, Number 4, Winter 1969. It begins on Page 753.

The article is entitled:

"Subjective Inaccuracies In Local News Reporting." It is written by Gary C. Lawrence and David L. Grey.

Q Will you describe just briefly what that article is about?

THE COURT: I can read the article.

BY MR. WILSON:

Q Are you familiar—

THE COURT: Do you agree with what it says, Mr. Fisher?

THE WITNESS: Yes.

BY MR. WILSON:

Q Are you familiar with either of the authors of the article?

A I do not know Gary Lawrence. David L. Grey, I know by reputation. He is an Assistant Professor at Stanford University in the Department of Communications there. He has a reputation as a scholar and as a teacher of journalism.

MR. WILSON: Your Honor, I offer Plaintiffs' Exhibit No. 10.

MR. KATZ: Your Honor, we object to the admission of this exhibit.

THE COURT: On what ground?

[49] MR. KATZ: This gentleman is not the author of it.

THE COURT: He is an expert and he says that he agrees with what is in it. So it is in lieu of his giving that opinion. You may cross-examine him on it. He has announced it as his view. He agrees with it.

Overruled.

[Whereupon, Plaintiffs' Exhibit No. 10 was received in evidence.]

MR. WILSON: I have no further questions.

### CROSS-EXAMINATION

BY MR. KATZ:

Q Mr. Fisher, you have been at the University of Missouri for how long?

A Since April 1, 1971, about 18 months.

Q Immediately prior to that, you were with the Chicago—

A Daily News.

Q —Daily News?

A Yes, sir.

Q Now, other than the one visit that you described to the Joliet Penitentiary 15 or 20 years ago, you have had no personal experience with prisons, is that correct?

A Oh, yes. As a police reporter I was often in County Jail, Cook County Jail, and the police lock-ups, both at Central Headquarters and the precincts out in the city.

Q How long ago was that?

[50] A Oh, this was when I was a reporter, so it was 20 years ago.

Q But you have not visited any penitentiary within the last 20 years, or so, is that correct?

A Fifteen years, yes, that is right.

Q So you have no personal knowledge of current problems in prisons and no knowledge of the problems faced by those charged with running them?

A I would not consider myself a prime source of that kind of information.

Q You have no personal knowledge?

A That is right.

Q Do you have an opinion, sir, on the matter of whether or not press attention which is given to protesters, militants, and so forth, can have the effect of encouraging these persons to certain activities?

A I think at times it undoubtedly does.

Q Do you think of any examples of that in recent times that you know of?

A Well, when a protester is seeking public attention, as, for example, the demonstrators at the 1968 Democratic Convention, which occurred in Chicago while I was editor of the newspaper there, during which I was often on the street and involved in. This was a means, a political means on the part of the demonstrators to call their particular grievance [51] to public attention.

Q Was it not a fact that many of these persons engaged in certain activities only when they saw television cameras were being focused on them during that period?

A I don't know that they engaged in them only at that time. I think that sometimes they made a point to engage in it when the television cameras were present. But there was a large demonstration going on without any television cameras.

In the '68 Convention, the television cameras were restricted because of technological reasons, technical reasons, to either the amphitheater or to the Stevens Hotel or the Conrad-Hilton Hotel area. Of course, a great many of the largest demonstrations occurred in Lincoln Park; and I don't know of any television coverage of that.

THE COURT: I am really not trying questions about Mayor Daley or what happened in Chicago, Mr. Katz.

MR. KATZ: I will move on.

THE COURT: I am trying to keep this hearing related to prison problems, if I can, and not decide what

might have happened at the Democratic Convention in '68.

I don't see the pertinent of that. I don't see the pertinence of your question.

MR. KATZ: I will move on, Your Honor.

BY MR. KATZ:

Q Did you speak earlier in your direct testimony, sir, [52] about an integrity gap in the media?

A I didn't use that term.

THE COURT: He was talking about credibility.

THE WITNESS: A problem of credibility.

BY MR. KATZ:

Q A credibility gap. Do you believe this exists to a significant extent in this country today?

A It always has and does today.

Q Do you believe at least one contributing factor to such a situation might be that certain members of the press might be inclined not always to be completely objective about a particular matter and to endeavor to ascertain both sides on a particular matter?

A To a degree that the journalist falls short of the highest professional expectations of his craft, he contributes to lack of credibility.

Q Now, with respect to the particular policy of the Bureau of Prisons, about which Mr. Wilson asked you some questions earlier, do you feel that the opportunity that is given in that policy statement for a newsman to visit an institution and to check out allegations made—the only limitation, apparently, being on a direct interview with the inmate—at least goes in large measure towards satisfying the requirements of the press?

A It goes part way. It is better than no visit at all.

[53] Q But it would, would it not, at least give the newsmen the opportunity to come in and observe and see and check out allegations that are made?

A Depending upon the nature of the allegations, he could check them or not. If it was an allegation concerning physical conditions, unsanitary conditions, and so forth, he could check those out.

Q Certainly these could be checked out, could they not?

A But if it is something that he would need to talk with the prisoner about, then he would not be able to check them out.

Q Well, you merely have the prisoner's side of the story in the letter which he presumably has written to the press. I believe you stated that the principal objective in dealing with these matters is to come in and determine whether or not the allegations are correct or incorrect; and you have this opportunity based on your opportunity to observe, as you have described, in most cases. So the purpose of the interview which you would expect would be what?

A To establish a basis of evaluating the kind of charges that have been made, if those charges relate to things which cannot be observed physically, when you visit the prison.

Now, if they can be observed physically, you can ascertain them with your own eyes. But most frequently, the grievances are not of that nature today in the prisons; at [54] least the letters that we received in the newspapers are not of the physical aspects of the prison.

Q I am sorry, sir, what was that last?

THE COURT: He says the letters they received don't usually relate to physical aspects of the prison. They relate to the treatment of the prisoners.

THE WITNESS: The personal grievances that the prisoner may have.

BY MR. KATZ:

Q Such as what, sir? Such as what? What are the most common types of grievances?

A The treatment that he has received from guards or other prisoners, a question of all sorts of personal, interpersonal conflicts that go on in the prison. Those, in my experience, as a newspaperman, on the receiving end from time to time of complaints of prisoners, have been the kind of things that would come to our attention most often.

MR. KATZ: Indulge me for a moment, Your Honor.

MR. WILSON: I have no further questions.

THE COURT: He isn't finished, I don't believe, Mr. Wilson.

MR. KATZ: I have no further questions.

THE COURT: You are excused, thank you.

(Witness excused.)

THE COURT: We will take a five-minute recess at this [55] time, gentlemen.

(Whereupon, a short recess was taken.)

MR. CALIFANO: I would like to call Mr. Boone, please.

WHEREUPON—

JOHN O. BOONE

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. CALIFANO:

Q Mr. Boone, would you please state your name, address and present occupation for the record?

A My name is John O. Boone; my address is 100 Cambridge Street, Boston, Massachusetts; and I am Commissioner of the State Department of Corrections, State of Massachusetts.

Q Commissioner Boone, is that the highest post in the corrections system in the State Massachusetts?

A Yes, it is.

Q Commissioner, would you state your education and professional experience, please, prior to assuming your present post?

A I got a Bachelor degree from Moorehouse College in Atlanta, Georgia, in 1950, and a Master's degree in social work from Atlanta University in 1951.

You mentioned, you said, experience?

Q Yes, please, your experience prior to—

[56] THE COURT: I think all he wants is your experience in corrections.

THE WITNESS: Oh, yes.

My experience in corrections includes six months at the New York State Training School for Boys; beginning in 1951, as a correctional officer at the United States Penitentiary, Atlanta, Georgia, until 1952. I became parole officer and supervisor of graduate students of social work and started doing group therapy until 1958, when I became case work supervisor, Atlanta Federal Prison.

In 1964, I became Chief of Classification and Parole Department at Atlanta Federal Prison, and was transferred to the United States Penitentiary at Terre Haute, Indiana, in 1965, as Chief of Classification and Parole, and remained there for approximately two years; and took leave to do a project on crime and corrections for the Southern Regional Council, under the auspices of the Ford Foundation, for three years, until 1969.

In 1970, I became Superintendent of the Lorton Correctional Complex and remained there for two years, until I was appointed this year, in January, as Commissioner for Massachusetts State Department of Corrections.

BY MR. CALIFANO:

Q Is that the Lorton Correctional Complex here in the District of Columbia?

[57] A Yes, it is.

Q Commissioner Boone, would you describe the correctional institutions of Massachusetts which you supervise, the number of institutions, the daily average population, racial makeup, and so forth?

A We have five major institutions, three prison camps, two community re-integration centers and contracts with three private concerns for halfway houses, for direct supervision of a total average daily population of about 3,000; and we have the responsibility, by reason of legislation effective October 16 this year, for establishing minimum standards for 16 houses of corrections, and pursuant enforcement of these standards involving approximately 2000 average daily population.



Q Do you have different levels of security in your institutions, in the prisons that are identified as such?

A We have all kinds of men in prison requiring minimum and maximum security. I inherited a system that didn't have a clearly-defined classification program. But we know that there are men that require minimum security and others who require close security.

Q For what kinds of offenses are men committed to your institutions?

THE COURT: All state felonies.

THE WITNESS: Yes, all state felonies, burglary, armed robbery, and embezzlement types of things. All imaginable [58] state felonies.

Q Give us a sense of the racial mix of your prison population?

A The population of the state prison system is about 30 per cent black, and 7 per cent Spanish-speaking.

Q Do you visit the institutions?

A As often as possible.

Q Do you consult with the wardens and administrators of those institutions and how often?

A Weekly at least.

Q How would you compare the Massachusetts system, Commissioner Boone, with the Federal prison system?

A I would certainly feel that we have the same problems in the state prison system that prevail in the Federal prison system. I feel that the Federal prison system is better able at this point to cope with their problems because they are better developed than the state system.

Q What is your policy with respect to interviews between members of the press and inmates of your correctional institutions?

A I have an open policy, reasonably open. We would mandate that access to the press be facilitated, facilitated in terms of problems that might prevail in our institutions at the time of the request.

THE COURT: What does that mean? If a newspaperman [59-75] wants to interview a prisoner and the prisoner wants to talk to him, can he or can he not do that?

THE WITNESS: He can do it. He would make the request and the superintendent or a departmental staff person, usually the Public Information Officer, would arrange it.

THE COURT: Set up the time and conditions?

THE WITNESS: Set up the time when he can come in, and in some cases we would want to know under what conditions this would be conducted.

[76] BY MR. CALIFANO:

Q What is your policy concerning television reporters?

A The same policy. We have an open media policy for the institutions.

Q What is your policy concerning the use of telephones by inmates?

A At all of the facilities in Massachusetts we have free use of telephones. When I came to Lorton there was regular use of telephones on a scheduled basis.

Q Can a prisoner call a reporter over those telephones?

A Certainly. He can call anybody he wants, to call.

Q Does anyone listen in on those phones, or are they private conversations?

A No. They are private conversations.

Q Does your policy in Massachusetts place any restraints on the subject matters of the interviews between the reporter and the inmates?

A No, not at all. We would consider that an exercise in futility to try to do that.

Q During those interviews are members of your staff present, or are they interviews between the reporter and the inmate alone?

A They are interviews between the reporter and the inmates, and we provide as much privacy as possible.

Of course, sometimes the interview may need to be [77] held in a visiting area where other prisoners could be around. Our resources are limited at some of the institutions. But we would certainly have no objections to a private interview, and we had private interviews both at Lorton and in the state, we have them in the State of Massachusetts.

THE COURT: Commissioner Boone, recently the Massachusetts prisons have been very much in the public eye.

THE WITNESS: Yes, sir.

THE COURT: There have been a lot of complaints, a lot of discussion about a substantial number of escapes that took place in a number of institutions. The governor has been sounding off about it and supporting you. Others have been raising questions in the press.

I have read stories as to whether or not you have become too permissive and, therefore, someone else should be the commissioner.

I don't want to get into all of that, but this has been a time of some tension in the prison systems in Boston and Massachusetts; has it not?

THE WITNESS: Definitely.

THE COURT: Yes. Now, during that period has the press been permitted to interview individual prisoners?

THE WITNESS: Absolutely. Since you raise that question—

THE COURT: The reason I know about it, I go in the [78] summer to Maine and I read the Boston papers.

THE WITNESS: Right.

THE COURT: And listen to the Boston radio stations. That is the only reason I know anything about it. But it was quite an exciting summer for you.

THE WITNESS: You would think that Massachusetts has the only correctional system in the country. But we had some of the same problems when I was at Lorton. We were quite visible.

THE COURT: Yes.

THE WITNESS: But I think the correctional administrators are too defensive in relationship to the media.

I had that at Lorton, and they were beating us to death because on one side we had a tendency to want to control the kind of information that would come out.

So we considered the practicality and the ideology on at least three levels—that is, on the individual level, on the group level, and on the prison community level—and we decided we must have free access.

While we appreciate the fact that with an open policy you would have isolated instances of problems, as well as you do with a closed policy, I think you have more problems with a closed policy than you do with an open policy. And I have many, many examples of how an open media policy has [79] facilitated our image in the community and gotten for us some solidarity behind the plight of coping with this problem.

When I was in Atlanta, Georgia, years ago, working at the Atlanta Federal Prison, a reporter somehow got into a Georgia Prison, and he took a picture where a young man had written on the wall "They is no God."

Now, certainly prison officials would perhaps prefer that picture didn't get out. But it was not an indictment necessarily against the prison officials alone. The man can't spell. It had an indictment on social institutions, and he wrote it in the hole. He just had given up, and Mr. Pennington wrote a series of exposes. But it turned out to be exposes on the correctional system, not on the people that give the money.

If you give a correctional administrator, as someone has said before, \$200, he is liable to buy some chains.

So with appropriate media relations, we can put this problem in proper perspective.

At Walpole, two months after I got there, there was a riot. The officers locked the men up and, unfortunately, hollered "race riot," and later the authorities broke in and brought the men out. There was a fire, and we had to make a decision one way or the other. We decided to do it. They said they wanted a press conference. We had 38 inmates [80] representing the groups there, black and white together, and the people all over the state saw them saying "This was not a race riot." There was a fight that was permitted to go on for 30 minutes and it escalated into this kind of disorder.

So that is one example of how access for the media helped up properly interpret a situation.

THE COURT: Well now, what about individual interviews, how have they or how have they not played a part in assisting you in the administration in Massachusetts?

**THE WITNESS:** I think that if you can get some good human interest interviews, they would give the public another side of this issue. But by and large, they do not help or hinder.

I have had one recently—we had some experience before with one that I would rather have not, you know, not gone along with, but I felt that I was out of place doing that.

We had a man named Di Silvo, known as the Boston Strangler, that had given an interview through a Bridge-water reporter, and it was misused for commercial purposes. It came out as "Titticut Follies." The man commercialized it, and it is banned from the state now.

Now, recently the same individual who made that movie came to me and wanted to interview what he said was his client, Di Silvo.

Of course, he was unethical, and there are [81] dishonest reporters.

Then once upon a time a lawyer entered the picture, and this is between the man and the client, and we wanted specifications as to what pictures he is going to take and where.

Now, we feel that from a political point of view and another point of view, we need to know something about what is going on in this. But, essentially, this is between that man and his particular client, and we would not feel urged to participate in that at all, other than to cover ourselves.

**THE COURT:** But did you let the interview with the press take place, the second interview?

**THE WITNESS:** Yes, it is going to take place, certainly. We just don't feel that we have any reason at all to interfere with that. We want to be sure that the position is that he will not misuse this and exploit our problems for pecuniary gain, and what have you.

**BY MR. CALIFANO:**

**Q** Commissioner Boone, during the period your policy has been in effect, do you have some estimate of the number of requests by members of the press for interviews with inmates, rough estimate?

A Very few, very, very few. I would say maybe an average of one a week. No more than that, certainly.  
[82] Q Have any of these requests been denied?

A We have not to my knowledge denied any, and I would have to deny it, because they can, of course, ask the superintendant for interviews, and if the superintendant is inclined to deny it, he would refer them to the department for further exploration. But we have not denied any.

Q What was the policy when you arrived to assume charge of the Massachusetts Correctional System with respect to press interviews?

A The policy was a policy that facilitated interviews under certain circumstances. It required a two weeks letter and a certain amount of interchange concerning the purpose of the interview. So the media had to go over a certain number of hurdles in order to get an interview.

Q And you removed those hurdles?

A Yes.

Q Why did you change the policy, Commissioner Boone?

A I changed the policy because, essentially, it was, in my opinion, self-defeating. As I said before, you have isolated instances, possibly, problems with this, with both an open and a closed policy.

With a closed policy, both the forces that wanted to hold back change—and this involved people out in the community—or self-styled advocates for inmates who enjoyed the fact that we were not being very democratic in prison, and [83] they were whipping us to death on it. And, also, the guards were controlling the kind of information that was getting to the press.

We felt that we should put it all on the top of the table, really come clean, and let us be accountable to the people who are paying for this agency. It is just like a school agency, a welfare agency, or any other kind of agency. There is nothing mystical about it.

In fact, it is mystical because we have made it mystical. We have been on the defensive through the years. That is my opinion.

**Q** Do you think that press access has any impact on the tensions of the inmates, and, if so, what?

**A** Not at all. I have seen where it has relieved tensions.

The Walpole incident, if those men could not have said in so many words "It is a lie that this was a race riot"—it was a riot, yes, destruction, yes. But it wasn't a race riot.

That was very important to them. We had investigation after investigation in the State House where officers were presented and the press was there, and all, and inmates said "We want a press conference, we want a press conference." And they were getting awfully angry, and had we not given any press conference, we probably would have had some problems.

[84] So we facilitated their press conferences at every institution. And it was peaceful, and it was responsible, and it was often supportive of a very difficult problem in prisons.

**Q** Do you think, Commissioner Boone, that your open media policy in press access to inmates has a positive or a negative effect on rehabilitation?

**A** I don't know if you could—you know, that would call for research.

**THE COURT:** You have got to decide, first of all, there is such a thing as rehabilitation.

**THE WITNESS:** I was fixing to say that. I question seriously whether there is any such thing as rehabilitation in prison, in the first place.

But I think that it could have something to do with getting resources. In other words, people don't pay for anything unless it is healthy or dangerous, and usually they pay for that by police control and military control.

But if we got some of these human interest stories out, maybe they would pay for psychological services and educational services.

I did group therapy for years. And if some of those slices of life could come out in human interest stories, I believe that the public would pay more for it when they see a retarded person ending up in prison both as a criminal and retarded, a person who needs psychiatric



treatment in prison [85] because they didn't have a decent chance—stuff like that—these kinds of stories, usually, you know, don't get out, and they could if we had this kind of support develop.

In the State of Massachusetts we are going to introduce reporters to the institutions. We are going to have them in a bus in small groups and take them and let them talk to staff members and inmates and learn more about it, because we have been hit below the belt by misconceptions.

In Lorton, Leon Dash came to us right after I got there, right after the riot that I had, and I had an awful time clearing up some of his misconceptions. I talked with him, and I had him to go around and talk to inmates and staff members.

Now, he comes out as a strong advocate for correctional reform because he learned.

Not only that, we are bringing legislators to the prisons to eat with them and to mingle with them and to learn more about what the problems are in the institutions.

This is the way to do it, as far as I am concerned.

Q Has your open press policy had any impact or any relationship to any actions by the Massachusetts Legislature?

A I would think that we have pretty good solidarity in the community, and some of the legislators are very careful in how they approach the problem of corrections. They are beginning to want to learn more about it because they know that their constituents are beginning to know more about it, [86] and this is no longer an iron curtain and they have got to be honest about it, they have got to cut out corruption and other things.

So I think the subject of corrections now is becoming a problem that everybody can know something about and speak about and form opinions about. And this is good.

Q What was the policy at Lorton when you took over Lorton, rather, when you became superintendant of Lorton?

A It was a fairly open policy. A reporter would call and request an interview, and, under certain circumstances, we would grant it, in private.

Q Did you institute that policy at Lorton, or did it exist before you got there?

A We had more of it after I got there. We started some new programs that attracted a lot of attention, and, of course, we had a riot. It was the result of a black-out. We invited the reporters in after that and let them take pictures. There were all kinds of estimates of the damage, anywhere from \$500,000 to \$1 million.

So we felt that these photographs would let the people see this.

The story got out the place was burned up. Well, some mattresses were burned.

They said a thousand men were dissatisfied, when 90 percent of the men were cooperative and only a handful [87] perpetuated that disorder.

So at that point, in fact, after this riot, we invited the support of the press. And it was not all a bed of roses, as it is not in Boston.

You have reporters who are dishonest, and you have some that have misconceptions.

But we can't do that by closing our eyes, in my opinion. We have to be aggressive and we have to try to deal with this kind of situation.

Q Do you distinguish between the kinds of reporters who are let in to interview your prisoners and others you do not?

A All kinds. I was interviewed, and a funny thing about it, they didn't interview the inmates. There was an underground newspaper, and I saw just last week when I was lecturing to a group of law students, and someone gave me a copy, and it said "Wanted, dead or alive, John Boone," because I am trying to reinforce the establishment.

So we let any kind of reporter come in. It is better to have it on top of the table than under the ground.

Of course, we have the Black Panther magazine coming in, newspaper coming in. We read it. If there is anything in there about making a bomb, we would not

have it in. We would, you know, cut it out or something.

But we have a fairly open policy, and that was [88] true at Lorton, also.

Q Commissioner Boone, have requests for press interviews or actual interviews under your policy produced administrative, serious administrative burdens on yourself and staff?

A Not at all. It is sort of routine, as with lawyers and visitors, both friends and relatives, it is just not an unusual kind—and it is not that frequent anyway. The press is looking for something too often to sell newspapers and, you know, it just is not a big burden for us.

Q Do you need any special security procedures for handling press interviews at your prisons that you don't have for other visitors?

A We would use the same as we have with others. If a law enforcement man came in, we would ask him if he has a gun, any knife or something, and he would deposit it.

They are all subject to shakedown if we want to. Within our discretion we can do it.

With responsible groups we use lots of discretion.

So I would say no more than any other responsible legitimate representative of any other field of endeavor.

Q Do you think that the press interview presents any prison security problem for you?

A Not at all, not at all.

Q Commissioner Boone, would you define or describe [89] for the Court what you would consider to be a "big wheel" or what a big wheel is in prison?

A Well, I have known them down through the ages. I met them first in Atlanta, Georgia.

I remember one of them approached a deputy warden named Graff. He was about to send him to Alcatraz, and he said: "Mr. Graff, you know good and well, I have kept more men from going to Alcatraz than you have sent there."

He was in the gambling, loan-shark business. You see, a prison being a closed community, the law of supply and demand prevails. It is a society. There are pretty tight controls and all of that.

And these men, the big wheels—I call them the wheelers and the dealers—walk a tight rope. And by and large, they want peaceful institutions because they want to keep doing their thing.

Unfortunately, we have used them down through the years. So they would be in the business of loaning money, cigarettes, if that is the medium of exchange, protecting homosexuals or not protecting them, or even selling them.

In some other developed systems in the south, something called conjugal visits may be just a prostitution situation.

Prisoners run those, and sometimes they kick back. When I was in Atlanta, I encountered a young man who was skin [90] and bones. He did not eat anything in a New Orleans jail because the prisoners sold the food to him. We felt that he might have kicked back to the jailer.

If we have steaks in an institution of 1000 men, we have to cook 2000 because they are going to steal a thousand of them and sell them.

Pills, contraband and all—the staff doesn't do it, but the staff is corrupted by it. The men that perpetrate these things are your wheelers and dealers. But they don't want any visibility, and they will fight change, too. So that is my conception of a wheeler and a dealer.

At Lorton the wheelers and dealers fought me. I had a man named Ash that I tried for six months to get him to chair a committee of civilians and prisoners to do a legal service program. And I couldn't even get a meeting of that committee or nothing. And later on I found out why. Ash was making himself about \$500 a month as a jailhouse lawyer. So he did not want any legal services situation there. Now, he was fighting the programs.

The riot at Lorton in 1970 was started by the programmers vs. those that didn't want a program, those that wanted to be tough. And they had a pow wow on top of a dormitory and decided to loot the canteen.

Now, after the canteen was looted, a few of them decided to do a little burning.

[91] So, really, your wheelers and dealers are part and parcel of the establishment.

MR. AIKENS: Excuse me, Your Honor. But could we ask that the witness be responsive to the question instead of giving a very, very lengthy statement. The original question was: What is a big wheel.

THE COURT: And I think he has defined it.

MR. AIKENS: If he did, Your Honor, I am not sure that I heard it.

THE COURT: Well then, perhaps you can review it again, Mr. Aikens, when your opportunity comes.

You may proceed, Mr. Califano.

BY MR. CALIFANO:

Q Are big wheels generally trouble makers in prisons?

THE COURT: Now, Mr. Califano, his definition of a big wheel is not the definition of Mr. Carlson and the various penitentiary officials who have appeared here. They have a different idea of what it is, and I think we are just engaging in semantics.

The problem that has been presented, Mr. Boone, by the prison officials to the Court and one that the Court has been instructed to inquire into, is whether there are not in felony penitentiaries individuals who come in having some notoriety, whether they be your Boston Strangler or they be a Bobby Baker, or they be someone else who has been a prominent [92] headline sort or criminal before he goes to the penitentiary—whether there are not individuals of that kind who by reason of the attention the press gives them and, therefore, the attention they get in the prison, as the news reports of their interviews and communications with the press come back through TV, through radio, through newspapers and through other communications—whether those individuals who are called big wheels do not get undue power and influence in the affairs of the penitentiary because of the prominence that they have generated by press interviews.

That is the issue that we are talking about in terms of a big wheel, as I understand it.

THE WITNESS: Right.

THE COURT: Not the man, the wheeler and dealer inside the prison who runs a good deal of the prison.

**THE WITNESS:** I can give my opinion of that by one or two examples.

It is my opinion that people are people no matter where they are, as individuals, groups or a community. And they earn leadership. You can't buy it.

**THE COURT:** Well, do they not attract it by press prominence? That is the question.

**THE WITNESS:** You could, but you will not sustain it unless you lead.

Let me, I can give two examples. In Atlanta I had [93] a student social worker who was a leader in the rights movement, and he was working with us. His name entered into the news two or three times as having discussed things with the press and others. And within a few weeks he lost his leadership by virtue of having this kind of media exposure.

When you have a crisis, you have leaders of sub-groups, presidents and chairmen, ordinarily coming together as a coalition, and ordinarily they would select a leader or sometimes a leader would just emerge because of certain kinds of strong characteristics. And even this is temporary, because after the crisis of sides, why, ordinarily they go back to their own groups.

**THE COURT:** The focus is not on periods of turmoil. Rather, the focus, as I understand it, and I may be in error, as I understand, it is something like this: The man starts giving interviews, and let's assume that he is an articulate, you know, articulate and perhaps inaccurate spokesman for the prison population. And by the fact that it appears through the media, he is raising holy cane all the time with the administration, one day about food, the next day about homosexuality, the next day about guard brutality, the next day about something else—does he attract to himself a support of others who say, in effect, man, you are really telling them how it is, and, therefore, gets an undue influence and position in the day to day operations of the prison [94] population.

Now, that is what was suggested to me.

**THE WITNESS:** Yes.

**THE COURT:** By the prison witnesses. And that is, the big wheel problem, as I understand it, the Court of

Appeals is concerned about. My point of view has nothing to do with this case, but it is the issue I have been instructed to deal with. And my order said that any big wheel could be barred from having any discussion with the press period.

But the Court of Appeals apparently is concerned about it, and that is the issue they want some kind of discussion from the experts about.

THE WITNESS: To be very frank with you, I have not seen individuals like that sustained.

I will admit that temporarily men are thrown into leadership roles. But I have not at all seen them sustained, and the true leader often does not emerge as the leader. He is usually behind the scene of any situation. And this would be by a group. You would not have a black muslim group which perhaps would have the largest following among blacks in any prison deferring to the leadership of another person that would set himself up as representing all of the cross-sections. It just, it would not happen at all.

So we don't see any one individual—let me tell you what happened at Walpole, and that is the place where we [95] have most of our trouble. Two things, and it might be helpful. I don't know.

We had two leaders. One of them had been sent to federal prison because he was considered a dangerous individual and he was going to blow the institution away.

We were prevailed upon by the legal community that due process was not provided. So we brought him back. He did assume leadership among his groups.

We had other leaders there. And he gained some respect among the staff that had sent him away.

During the heighth of organizing, which is now in process, some kind of union experiment at Walpole, he allegedly slipped down the steps and became paralyzed. And we are sure the bosses did not tell him to cut this business out.

Another leader, we had three or four, but another leader let it be known to me through his attorney that he wanted me to get him out of that place. But he was too tough to admit that he had to admit to sanction of the group.



In that group we were pursuing legislation which we got, in spite of all of the turmoil. We appealed to the leaders or the representatives of all of the groups. We said that we cannot stand violence and we are going to deal with it, and you get out there and see what you can do in your constituency.

[96] And they came back to us a couple of times and said: "We find it very difficult to do anything. We are being provoked and we can't hold the line." They did sustain, they did hold, but it was a coalition. There was no one person, no way in the world one person could have controlled that, even though there are only 500 men in that body. So you certainly wouldn't think that one man could control 1000 prisoners.

I just don't think, in my opinion, that theory has any credibility at all.

BY MR. CALIFANO:

Q Do you think that these leaders are the ones who start disturbances and riots in prisons?

A Neglect and poor procedures and policies, and poor communications, poor media relations—that starts riots in a prison. I don't want to over simplify, but that is what starts it, really.

MR. CALIFANO: I have no further questions, Your Honor.

THE COURT: Mr. Katz.

### CROSS-EXAMINATION

BY MR. KATZ:

Q Mr. Boone, how many inmates do you have in your system, overall?

A 3300.

[97] Q I believe you stated you had five penitentiaries?

A Five major institutions. Not five penitentiaries, no.

Q What are the names of those five institutions?

A Walpole is called a correctional facility. It is a maximum security facility. Norfolk is a so-called medium security institution. Concord has been called a reformatory.

Q Concord?

A Concord. Framingham is an institution for women. And Bridgewater is the state hospital for the criminally insane and the sexually dangerous, which is the largest one. It has the largest one. It has the largest constituents, population. And we have some prison camps in community correctional facilities.

Q So you have only one institution you would call a penitentiary?

A That's all.

Q This is Walpole?

A Right.

Q Is the policy which you described earlier that you have respecting inmate access to media in writing?

A We have not reduced it to the form of a directive as such. We are in the process of a study by Boston University of revamping our policy.

But through staff meetings and memoranda, letters, [98] we have established this policy. I believe the policy—

Q You don't have a regulation on the subject at the present time, is that correct?

A It is a regulation. I said it and I wrote it, and anything I write is policy, unfortunately. I have to live with that decision.

Q Do you happen to have a copy of it with you?

A No, I don't.

Q In order for a newsman to have an interview with an inmate, must he make a request in advance?

A Yes.

Q What information is he required to furnish?

A Well, the name of the inmate and the nature of the interview and the time that he wants to have the interview. That's about it, in essence.

Q What do you mean by nature of the interview?

A We would like to know, in the first place, whether it is a human interest story, because we find great value in these ourselves and we might want to participate with that so that we can get as much out of it as possible.

If it is a commercial, we want to know if the inmate buys it. If he wants to sign off on this, if any pictures are made, he would have to agree that the pictures can

be used. If any money is involved, certainly, we would want to an extent be sure that he offers the inmate a contract, [95] and that he is not exploitative of the inmate.

Q Have there been other reasons besides those given by people desiring interviews under the heading "nature of interview"?

A Yes. We had an interview, a man both at Lorton and here, who wanted to follow an inmate out.

Q I am not talking about Lorton. I am talking about Massachusetts.

A I said he wanted to follow a man out on furlough, and this was done. We thought this was a human interest story. I mentioned human interest.

Q Have you ever had any person make a request for an interview where the nature of the interview is stated as to check into allegations of mismanagement of the prison, or anything of that nature?

A Yes. We have had, and, in fact, there was some validity to this in the final analysis.

Q I only asked you the question: Did you receive a request of that sort?

A Yes, definitely.

Q That is all I asked. What is your policy concerning correspondence between inmates and the news media?

A Outgoing, free and open. Incoming, we can check for contraband.

Q You do not inspect outgoing correspondence at all?

[100] A It goes out. No, not at all.

Q And the incoming correspondence is checked for contraband?

A Checked for contraband.

Q Is it read?

A Not read, no.

Q Now, do the local newspapers come into the institution?

A Yes.

Q Are they widely circulated among the inmate population?

A Well, we don't have lots of news media—

THE COURT: He is talking about the morning newspaper. Does the Boston Globe come in?

THE WITNESS: Oh, yes, they have newspapers, certainly.

THE COURT: You have TV and radio, and all that?

THE WITNESS: TV, radio, newspapers of all sorts, yes.

BY MR. KATZ:

Q Are these newspapers examined by the officials at the prison before permitted to be circulated among the inmates?

A No. They are examined in the discretion of the person who is examining, based on his assessment of the gravity of the possible introduction of contraband.

[101] Q Contraband in the newspaper?

A It's possible.

Q What type of contraband are you referring to?

THE COURT: Heroin, for example.

THE WITNESS: You could have heroin in there. A weapon. That's possible.

BY MR. KATZ:

Q I am not referring to that type of situation, Mr. Boone. What I am asking you is—

THE COURT: Do you censor what is said in the newspapers, is what he is trying to get at?

THE WITNESS: Oh, no. I said that if anybody—

THE COURT: If you get an unfavorable editorial in one of these papers, do you cut it out so the prisoners don't see it?

THE WITNESS: I have got many of them. No, not at all. We don't cut them out.

THE COURT: Isn't that what you are asking, Mr. Katz?

THE WITNESS: If the paper had how to do a bomb, we wouldn't let that one in. Although we, you know, they probably now know how to do a bomb, because we have Vietnam veterans in prisons now.

But we wouldn't let that one in. We would use that discretion.

[102] BY MR. KATZ:

Q Is there any other category of information that you would censor?

A We might, according to our regulations, we reserve the right to send stuff to the postal inspector, you know, if it is a little too dirty.

Q Obscene matter?

A Obscene stuff, yes.

Q Anything else?

A Not that I recall at this time.

Q Do you have in your system at the present time any prisoners of national reputation and notoriety? I think you mentioned Mr. Di Silvo. Anyone besides him?

A Yes. Well, we have some, probably an unusually large number of so-called Mafia members. This is a Mafia area.

Q Organized crime types?

A Yes, we have our share of those.

Q Persons with a national reputation?

A Oh, Yes. We had, for example, Stanley Bond, killed himself with a bomb and he had a national reputation.

In fact, when I walked through Walpole, it is like old home week. I see so many, many that I knew in Atlanta Federal Prison.

Q Do you have an estimate, Mr. Boone, of what [103] percentage of the prison population overall throughout your system you would consider disciplinary problems or troublemakers?

A Less than five percent.

Q Do these five percent give you a great many problems?

A A portion of the five percent give me tremendous problems.

Q What sort of problems are they, Mr. Boone?

A They are the individuals that we just really don't know what to do with these days. They used to call them psychopaths, socio-paths, or what have you. These guys can't control their impulses, they act out quickly, and things like that. We have some of that type.

**Q** What about rebellious or militant prisoners, do you have many of those?

**A** No. That is a fraction, really, as far as I can see. You have men militantly pursuing change in prison. But they would not belong to any organization.

I say you have some of these organizations outside that can't get a toehold, and they would like to see us do things that are contrary, you know, so that they can reinforce their line, which is usually the communist line, you know. But we don't have any problem with them.

**Q** Do you have any policy as to what you do with your most troublesome prisoners?

**A** We try to get them to federal prison, because they [104] have numerous penitentiaries, and the kind of security that we have only in one institution, and that is Walpole.

So far, I believe we have transferred five out of the less than five percent of the population that we would like to provide a maximum amount of security for.

**Q** Under your interview policy, Mr. Boone, normally to whom are the requests for interviews made? Is it to you or to the warden of each institution, or what?

**A** To the superintendant or the public information officer.

**THE COURT:** He has testified that if it is denied, if they have some question about it, it comes to him for decision. That is what he has said.

**THE WITNESS:** Right.

**BY MR. KATZ:**

**Q** Can you conceive of any situations in which you would deny a request for an interview?

**A** Yes.

**Q** What would those be, sir?

**A** If I had a man in my prison that was a federal prisoner, and this is possible, that was there for treason or something like that, or a spy, before I permitted him to have access, I would probably communicate with the director of the federal prison system. It would be rare occasions, but it would be these sensitive or international kinds of things, [105] maybe.

Q Have you ever had that situation?

A No. On the contrary, in Atlanta we did get permission to let a spy do a magazine article.

Q For him to write one himself, do you mean?

A One was written by him.

Q Would you tell the Court how many riots or other disturbances you have had at the various institutions in your system since you took office in Massachusetts?

A Yes. I had one riot at Walpole that lasted two days. And I had what I call disorders, two at Concord, that was relegated to one wing involving about a hundred men on two different occasions. And fortunately we have been able to handle all of those ourselves.

So we have had, in essence, about three situations of violence during the 11 months that I have been there.

Q Did you ever have an incident at the Framingham institution?

A We have peaceful demonstrations. We have had work stoppage demonstrations, which I consider healthy.

Q You consider helpful?

A Healthy, yes, very much so. I would much rather see a person sitting down peacefully trying to communicate than burning up stuff.

Q What form did this healthy demonstration take?

[106] A Well, let's take Framingham, for example. Here again, I might address myself to the discretion that I assigned to the superintendants to say when the press can come in. During the heat of a crisis, they have to have it.

Q Oh, do they have that discretion?

A Oh, yes, definitely. They have that discretion.

I was called down right after the Walpole riot, during the Walpole riot, to Framingham, because the superintendant and her staff were surrounded by women who wanted to communicate in her office. So we went down, and the superintendant decided that she would let them work on a program. She wanted to do a therapeutic community, and they wanted to do something more concrete. They said "We don't need therapy. We need help."



So they worked on this plan. And during the working itself, they called for a press conference. The superintendent didn't want to do it.

Q Who called for a press conference?

A The inmates. The superintendent didn't want to do it, and I did not force her to do it.

Finally, a representative that represented that area prevailed upon her to let the women have a press conference.

Q I'm sorry. Excuse me. A representative of what?

A Of that particular county, area, district—state representative.

[107] THE COURT: What you would call a congressman, is what he is talking about.

THE WITNESS: He was also head of a legislative committee on corrections. He prevailed upon her to have them receive the press. And they did. And after they had their statement before the press, they felt very proud of themselves and it was practically over.

But being women, it got to them. They liked to see themselves on television. So they tried for some more. But she cut it off.

So at Framingham and at Norfolk and at Concord, largely, we have had peaceful demonstrations, and usually, especially Concord, the press has been there when we have had these discussions among the staff, prisoners and civilians from the surrounding community.

Q So that it is your testimony, then, that this thing at Framingham went on for a long period of time after this press conference took place?

A No. I say after the press conference took place, it looked like it was practically over. They had their say to the community that they thought was getting a misinterpretation or misconception of their problems.

So when they saw it was over, they wanted others because they saw themselves on TV, and these people, you know say "I am on TV," the whole group of women. Let's do it again.

[108] Q They saw themselves on television and then another incident?

A There was no incident. They requested another press conference and we speculate that they requested

another press conference because they liked to see themselves on TV as a group, but the superintendent declined to do this. But the peaceful demonstration was over after that. They had their say to the public and it was finished.

THE COURT: This has nothing to do with what is before me. It has no relation to anything that is before me. There isn't anything before me that has anything to do with whether or not the federal prison system should or should not permit the press in at times of disturbances in the prison.

That isn't before me, and I don't understand your interest in pursuing it. I have recognized from the beginning that, obviously, in times of tension, participation of the press when there are disturbances in a prison is something that can be prohibited. That isn't involved here.

So what is the relevance of it? I do want to get the record that the Court of Appeals wants. But that isn't before us.

MR. KATZ: Well, there appeared to be a suggestion from his testimony that—

THE COURT: No. You brought up Framingham and you wanted to ask him a lot of questions about Framingham designed [109] to demonstrate that because he allowed interviews, a riot had occurred. There has been no discussion of that. That was what your inference was.

MR. KATZ: There appeared to be a suggestion that this was a result from one or two of his responses. I am just attempting to clarify that, Your Honor.

THE COURT: Why don't you ask him about it, then, instead of having an account of something that doesn't relate to it.

I would like to stay on this policy, as best I can. The policy has to do with individual interviews, unsupervised.

BY MR. KATZ:

Q I think you stated at some point during your direct testimony that your relations with the press were not always a bed of roses. Did you say that?

A That is true.

Q What did you mean by that?

A I mean that the press, some newspapers have a philosophy and what they consider a constituency, and they might ask you the situation in their direction. That is reality. We don't give up on them. We try to continue to impinge upon their philosophy in having editorial, off the record conferences, we have had many of those to try and get them to understand and put it in the proper perspective.

[110] THE COURT: Now, Mr. Katz, may I ask again: What has this got to do with the case? What has this possibly got to do with the case?

MR. KATZ: Your Honor, he made the statement on direct. I was just attempting to clarify it.

THE COURT: There were many irrelevant statements on direct that you didn't object to. And it seems to me the fact that he, like other public administrators, doesn't have a totally favorable relation with the press, that comes as no surprise to me. I don't know of any official that does, including judges. And it seems to me that all he is saying is that: "I still let the press in even though I don't agree with their editorial policy or I don't agree with their attacks on me. I am letting them in."

Of course, he has trouble with the press. Most anybody in public life does. We have been well reminded of that over the last few years.

I don't see what the relevance of that is to what I am supposed to be concerned with here.

MR. KATZ: Very well, Your Honor.

BY MR. KATZ:

Q I think in your direct testimony, Mr. Boone, while you rejected the concept of individual inmate leaders or the big wheel, you did indicate that they tended to gather coalitions to exercise the leadership role. It that what you [110-A] A What I said is that in a crisis the subgroups might tend to come together in a coalition, which means that the president or the chairman of the group may make up an executive council, and in that way a cross-section of interest and points of view can be represented to the management.

That has been the tendency in all of my institutions, except Framingham, which is a small institution, where practically all of them met and selected one person to represent them.

MR. KATZ: Thank you. We have no further questions.

### REDIRECT EXAMINATION

BY MR. CALIFANO:

Q Commissioner Boone, is the Boston Strangler a big wheel in the prison he is in and a leader of the other prisoners?

A No.

Q What do they think of him?

A He is just a non-entity, almost, with them. In fact, some of them question whether or not he is in fact the Boston Strangler. They think that it could be somebody else.

Q The Government raised questions concerning the disturbance at Walpole and incidents at two or three other institutions under your jurisdiction. Were those disturbances caused by your open press policy?

A Not at all. They had no relationship to it at all.

[110-B] Q Do you think if you had had no open press, would you have had those disturbances?

A I would have had them and, perhaps, as I testified, they might have been aggravated without appropriate press response.

Q You have been at Lorton, you have been earlier in your career in the federal system in Atlanta—Lorton is part of the federal system, in a sense—and you are now Director of Corrections for the State of Massachusetts. Are you aware in view of your experience and expert knowledge, of any reasons why the federal system should be different because of the prison population or other considerations than your system is in terms of being open to the press?

A I indicated that in certain sensitive areas there should be some discretion. For example, in an international kind of situation, certainly.

Q But in terms of day to day, no riot situation, no international situation—in private interviews between media and prisoners, do you see any reason why that should be different in the federal system than it is in your state system?

A Not at all. I don't think so.

MR. CALIFANO: No further questions, Your Honor.

THE COURT: Thank you, Commissioner Boone.

MR. KATZ: May I just ask one further question?

THE COURT: Yes. I'm sorry.

[110-C]

### REDIRECT EXAMINATION

BY MR. KATZ:

Q Do you have any knowledge of the federal system other than your tenure as, I think you said, you were at Atlanta?

THE COURT: And Terre Haute.

THE WITNESS: Atlanta and Terre Haute. We worked together when I was at Lorton.

MR. KATZ: No further questions.

THE COURT: You are excused, Commissioner. Thank you, sir.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Gentlemen, I guess we better adjourn now for lunch. I have two matters at 1:45 which will take about 15 minutes. So I would anticipate we would start up again in this case at 2:00.

COUNSEL: All right, Your Honor.

THE COURT: Did you have something on your mind?

MR. CALIFANO: I was going to say, Your Honor, I have Dr. Gould here. I don't think he will take more than five minutes. I just have him on a no issue. He is a psychiatrist.

THE COURT: We have five minutes. I am willing to take five or ten minutes. But I do have a committee meeting [110-D] of other judges, so, therefore, I can't run too long.

I don't want to inconvenience the doctor. But usually when a lawyer says he has a five-minute witness, he takes half-hour. I don't mean any reflection on you or Mr. Katz, but that is generally the way it works out.

So I think we better wait until 2:00.

MR. KATZ: If I may, Your Honor, I would just like to take up one problem at this point, which is about one of our witnesses we have to have testify today because he is going back to Florida tomorrow morning. That is the only flight we could get out for him.

THE COURT: We ought to put him on out of turn and let him testify. We have got holiday problems all around.

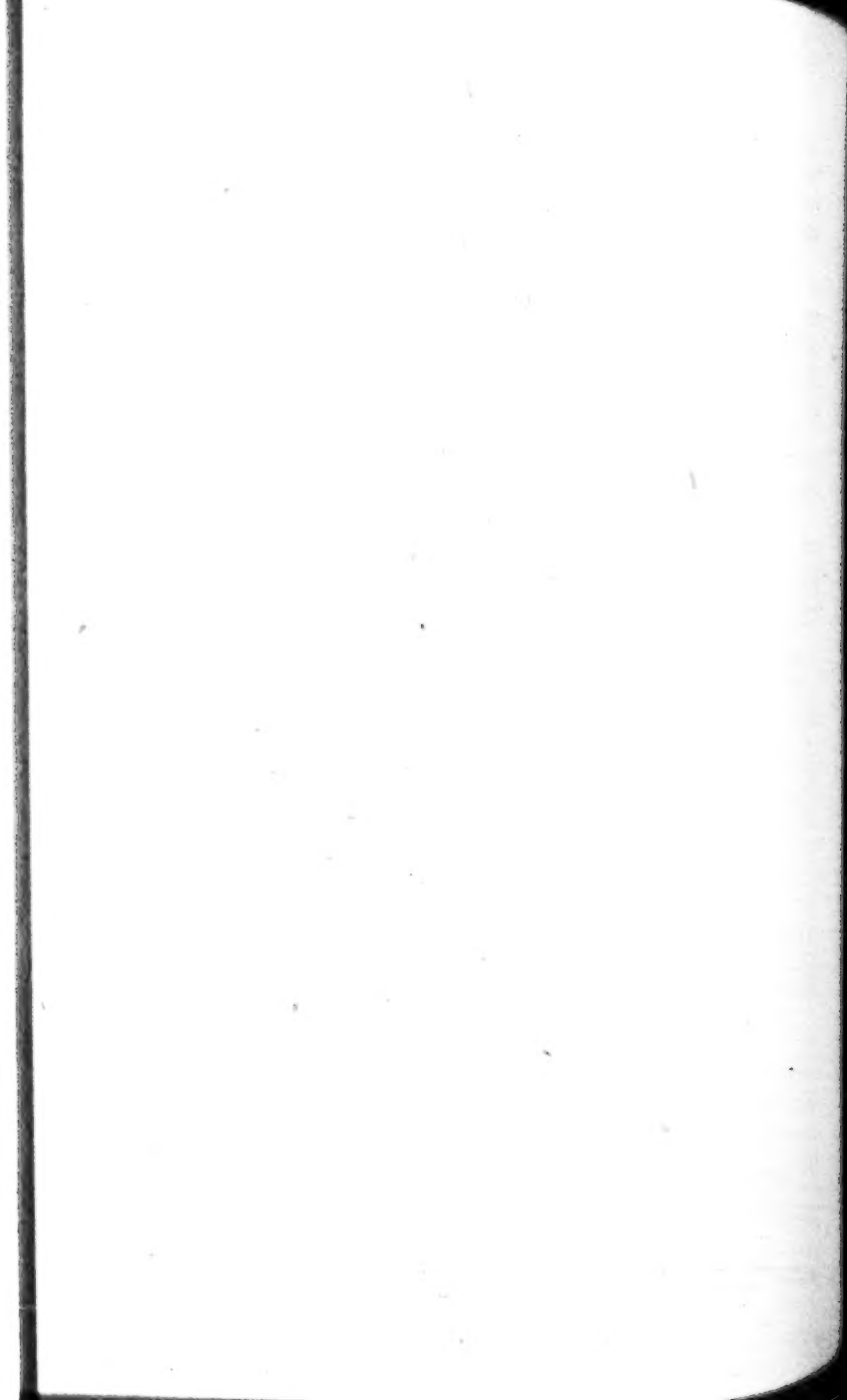
MR. CALIFANO: Your Honor, the only witness we have is Dr. Gould and, possibly, Mr. Carlson, and we can put Dr. Gould on and then put him on later in the day. I would like to get Dr. Gould on.

THE COURT: You have Mr. Leland?

MR. CALIFANO: Yes, Your Honor.

THE COURT: I don't want to inconvenience anybody more than I have to. 2:00 in this case. 1:45 otherwise.

(Luncheon recess taken at 12:30 p.m.)





IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1973

No. 73-1265

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WILLIAM B. SAXBE, ATTORNEY GENERAL OF THE UNITED  
STATES, and NORMAN A. CARLSON, DIRECTOR, UNITED  
STATES BUREAU OF PRISONS,

*Petitioners*

—v.—

THE WASHINGTON POST Co. and BEN H. BAGDIKIAN

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE DISTRICT  
OF COLUMBIA CIRCUIT

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## [111] AFTERNOON SESSION

(2:20 p.m.)

THE COURT: We can go ahead with the Washington Post case now.

You are calling your psychologist?

MR. CALIFANO: Your Honor, Dr. Gould could not remain. He had to go back to New York. But, we have talked to the Government counsel, and we will put on Mr. Leland now. And, they put on their witnesses that have to leave town.

THE COURT: All right.

MR. CALIFANO: We may even make it this afternoon.

THE COURT: All right.

Then, you will want to out or order take your people that have to leave town?

MR. KATZ: Yes. I apologize to the Court.

THE COURT: There is no problem in my mind about it.

MR. KATZ: I made the statement this morning that we had one witness that was a problem. In fact, we have two.

THE COURT: You have two.

MR. KATZ: Yes.

THE COURT: I will hear them.

MR. KATZ: Thank you, your Honor.

THE COURT: I will hear them.

MR. WILSON: Mr. Leland.

[112] Whereupon,

**TIMOTHY LELAND**

was called as a witness, and having been first duly sworn by the deputy clerk, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. WILSON:**

**Q** State your full name and place of residence for the record, please.

**A** My name is Timothy Leland. I live at 220 Dorset Road in Newton, Massachusetts.

**Q** Where are you employed, Mr. Leland?

**A** Boston Globe.

**Q** In what capacity?

**A** Assistant managing editor.

**Q** How long have you been employed by the Boston Globe?

**A** Nine years.

**Q** Prior to joining the Boston Globe, did you have any other training or experience in journalism?

**A** Yes.

**Q** Would you describe that training?

**A** I graduated from the Columbia Graduate School of Journalism in 1961, after which I went to work for the Boston Globe, first as a general assignment reporter, and then assigned as a medical editor.

In 1963 I was hired by the Boston Globe as the science [113] editor.

In 1965 I was assigned to State House Bureau. I became the State House Bureau chief in '66.

I was named assistant city editor in 1968. In 1969 I took the year off and traveled on a traveling fellowship to Africa, and then served six months at the London Sunday Times in London, and I served on their investigative team called "Insight," after which I returned to the Boston Globe and formed and headed a team called Boston Globe Spotlight Team.

I was named assistant managing editor in 1970.

Q Mr. Leland, just to clarify your testimony, you said after leaving the Columbia Journalism School you went to work for the Boston Globe?

A Boston Herald.

Q From there you went to the Boston Globe?

A That is right.

Q Mr. Leland, have you been the recipient of any awards or prizes as a result of your work in journalism?

A Yes, I have.

Q Would you tell the Court which prizes and awards you have won?

A In 1968 I was cited for distinguished reporting by the American Political Science Association. In 1970 I received the Pulitzer Prize for investigative reporting as well as the Sigma Delta Chi bronze award for civic service, [114] and the United Press International investigative award, and Rotogravure-Best-Magazine-Story-of-the-Year Award.

Q What is the Sigma Delta Chi that you mentioned?

A Sigma Delta Chi is the journalism professional society.

Q Mr. Leland, you mentioned that after returning from London in 1970, I believe it was, you formed the Spotlight Team of the Boston Globe.

A That is right.

Q Would you explain what the Spotlight Team is, please?

A The Spotlight Team is a four-member full-time unit engaged in the pursuit of what we think of as active reporting as opposed to passive reporting. We at the Globe have come to the conclusion that newspapers are essentially and have been essentially reactionary in a true sense of the word. We tend to react to events that have already occurred and respond to situations that have taken place outside of our own activity.

And, we believe that it behooves the press both for its own individual interest and interest of the public at large to engage in more creative active pursuit of information, which is what we are doing at the Spotlight Team.

Q Now, is the Spotlight Team at all unusual in terms of its concept in American Journalism?

A Only insofar as it is a four-member team, which is a [115] rather large number. Most newspapers have one or two individual investigative reporters.

We institutionalize it on a full-time basis. We have certain techniques which are fairly conventional in terms of investigative reporting at large.

Q Mr. Leland, what has been the type of news story that Spotlight Team has focused on?

A We are largely concerned with public corruption or malfeasance incompetence of some degree.

Q Now, you say that you have developed certain techniques which are somewhat distinctive with the Spotlight Team. Could you describe those, please?

A Well, a typical investigation would begin with a tip of some sort either by letter or by telephone, and we spend a good deal of time trying to establish the credibility of this information by engaging in a face-to-face interview with the person who is making this information available to us. And, having done so, if we decide that there is enough merit and credibility to the information received, we proceed with the investigation, which breaks down generally into two parts, one of which is a paper research—attempt to obtain as much information as we can from public documents of various sorts, and the second half of that phase of the investigation is a personal interview technique, which may take three, or four, or [116] five weeks, or even as much as three months, in which we attempt to interview as many people as we possibly can and evaluate or corroborate the evidence that we have obtained through the records.

Q Now you say that your first step is to have a face-to-face encounter with the source of the tip, is that correct?

A Yes, sir.

Q Why is that important in your operation?

A Well, we are involved in a fairly high priority, high potency operation. These things take, as I say, up to three months or four months, and we are not anxious to set out on a pursuit of this sort without being quite sure that there is something there.

So, it becomes incumbent upon us to prove to our own satisfaction that this information is coming from a reliable individual and is credible in every way.

Q Can you illustrate from your experience some examples of the effect of face-to-face interview with the initial source?

A Yes, I can.

Q Would you please?

A There are many examples that come to mind, one of which would involve the investigation that led to the Pulitzer Prize. We had a tip that there was a great deal of malfeasance and mismanagement involving the Sumnerville officials from a [117] source that called us up and told us that he had given information to the Attorney General's Office of this sort in Massachusetts, and that had been about a year previous, and nothing had come of it, and he would like to come and talk to us.

The Attorney General's Office in Massachusetts is quite an effective one. It is quite efficient. We have quite a lot of regard for it. And, it didn't appear to us that it was likely to produce anything that we pursue. But, as we do in all these cases, as I say, we did ask him to come in, and we in effect cross-examined him for a period of several hours one afternoon.

This man appeared to be very rational, very intelligent and had no particular ax to grind and had some information that appeared credible.

So, we made the judgment that we would pursue this. It took us about three or four months to do it, but in the end the information we came up with resulted in 120 indictments against 29 individuals, three of whom were former mayors and various city officials.

Q What has been your experience with the Spotlight Team in terms of whether the accurate effect of reporting of news has a critical dependence upon the opportunity for face-to-face interviews?

[118] THE COURT: Vis-a-vis prisons. I don't care about if it is of critical importance on reporting nuclear energy. I want to know about prisons. That is what I am concerned about. I am not concerned with the other areas.



BY MR. WILSON:

Q Mr. Leland, have you had any experience in covering prisons?

A Yes, I have.

Q Would you describe that experience, please?

A I have had a couple. One involved the case of an individual who pulled his eyes out under drugs in Baltimore. This particular individual was the son of a Massachusetts political figure, and we decided to try to come up with a profile of his experience and how he came to find himself in jail under these circumstances.

And, one of the things that he alleged was that he had been very badly mistreated when he was arrested on another issue and had been put in jail, and he had been abused while he was in jail, and had been deprived specifically of water the night he pulled his eyes out. And, in a fit of great physical stress he had taken this step.

We wanted to check this out, of course. We came down and had long interviews with him. He wasn't in jail at the time. He just recently had been released. And, we also had interviews in jail with his associate or [119] accomplice of his in a drug world that he came out of.

And, in the course of this face-to-face personal kind of interviewing, we came to the conclusion that this was a very unstable, really quite unreliable individual who had an experience of great trauma in jail. But, we couldn't find any evidence at least to our satisfaction that it had been caused from any problems that the police officials had created for him.

The evidence that we got from him personally was corroborated largely by his friend or associate whom we did interview in jail.

And, as a result of those particular interviews, when we came to write the story, we took some pains to down-credit his own charges of mistreatment in jail.

Q Would you say that in that instance the opportunity for face-to-face interview in the jail was critical to developing an accurate and effective story?

MR. KATZ: Objection, your Honor.

THE COURT: That is leading.

BY MR. WILSON:

Q What was your experience, Mr. Leland, in terms of the importance of the opportunity for face-to-face interview in the Baltimore jail in that instance?

A Well, I can only say without the chance to interview this person personally or get a personal feeling for his [120] credibility, which you can really only do when you talk to an individual, we probably would have had to go with his original charges and publish them as he made them, which we didn't feel would have been in the best interest of the prison officials or our responsibility as a free press.

Q Have you had any other experience with coverage of prisons or jails?

A Yes, I have.

Q Could you describe that experience?

A Recently we have had an incident at a jail in Massachusetts—Charles Street Jail, which does not fall in the immediate jurisdiction of Commissioner Boone, whom I believe this Court has heard testimony from.

This incident of last week involved, as I say, a riot and has subsequently resulted in allegations of guard brutality and mistreatment of persons who participated in that riot.

I, myself, didn't cover the incident as a working journalist, but I was serving in the capacity of acting managing editor last week, and was bothered, frankly, in the way that Boston Globe and other papers in Boston were forced to present the story, because we were not given an opportunity to interview the prisoners themselves.

This resulted in our having to print the allegations that came from the lawyers' experiences, which were flatly that [121] they had been badly treated and abused and brutalized. And, the result was rather grim black headlines to this effect.

I didn't feel that we were adequately enabled to make a judgment based on some personal observations in this connection.

I felt and I feel right now that the rules of that particular jail which prevented us from going in and talk-

ing to these people were such that lead to the—contrary to the interest of the prison officials themselves.

Q What do you mean by personal observation? You used that term.

A Personal observations are the kinds of observations that anybody derives from face-to-face contact. There may be physical evidence of beating or mistreatment. There may be just the kind of personal evaluations that you make from individuals when you are given a chance to talk to them.

Q So, you are saying that included the fact that you were unable to talk—the reporters from the Globe were unable to talk to the inmates in that particular jail?

A That is right, under the regulations of that particular jail.

Q You said that you did not actually participate in writing that story or actually doing any on-scene coverage.

A That is right.

Q Did you play any role at all in the development of that [122] story?

A Well, as acting managing editor, I was responsible for the paper's treatment and coverage of the story.

As I said, we had to go with what we—as they say in Journalism School, you go with what you have got. If you don't have enough to give the thing any depth and dimension or corroboration, you simply go with the information that is available to you at the time.

Q Is it your testimony that you were not satisfied with what you got?

A That is correct.

Q Mr. Leland, were you in the courtroom this morning when Dean Fisher testified?

A Yes, sir.

Q Do you recall that I read into the record at that time two sentences from the Government's brief in the Court of Appeals?

A Yes, I do.

Q I will not reread that at this time. I put before you a copy of that excerpt. I would like to ask you a few questions based on it. You may take some time to review it, if you wish.

A All right.

Q Mr. Leland, would a story relating to prison conditions [123] or prisoners' grievances fall within the purview of the work done by the Spotlight Team of the Boston Globe?

A Yes, sir.

Q If the Spotlight Team would undertake a story dealing with prison conditions or prisoner grievances, would you be satisfied—we are talking about the Federal Prisons and the policy reflected in those sentences relating to the Federal Prisons—would you be satisfied that you could develop an accurate and effective story from the sources of information that are set forth in that excerpt from the brief?

A No, I wouldn't.

Q Why is that, Mr. Leland?

A Well, clearly, if you are going to get a three-dimensional picture of grievances, you would have to have some access to the people that are making known these grievances. As I read this, we would have access only on a face-to-face basis with the prison authorities, whose natural inclination would be to deny them or to turn them aside.

THE COURT: Mr. Leland, let me see if I can get at more sharply what I think is being put before me.

Here are a group of people that are penned up by orders of judges whom the executive is keeping from talking to the press, so you don't have access to them. But, aren't there all kinds of situations where your story would be better if you could really get access in the complete sense that [124] you would like it.

Certainly you have written stories about Governor Sergeant up there without talking to him sometimes when he hasn't wanted to talk or comment, or you have written stories about other situations of a governmental character where the people involved haven't let you talk to them.

Isn't it just the fate of a newspaperman that he just doesn't always get access to the total source so to speak.

What is there that is different about this than what you run into in everyday life in a lot of ways.

Can you interview people in a home for the retarded? Take Furnel Home for Retarded in Waltham. They have some 1800 inmates, I believe. Can you go in there and interview those inmates about the way they are being treated, or are you stopped by the authorities?

THE WITNESS: I am not clear, your Honor, what the regulations are in the Furnel School.

THE COURT: Take an insane asylum. Can you go into an insane asylum and talk to people?

THE WITNESS: I am not aware that we are not able to, no.

THE COURT: Are you aware that you can?

THE WITNESS: Presumably it would be a little more of a problem to communicate with a legally insane individual, [125] your Honor.

THE COURT: A lot of those people are wholly competent though legally insane. At least, they are around this town.

THE WITNESS: Of course, as far as the Governor is concerned, we do have access to him through press interviews.

THE COURT: Through his press man.

THE WITNESS: He holds press conferences. We are given a chance—

THE COURT: Let's talk about the national scene. Lots of times you can't talk to the President. Mr. Ziegler tells you what he wants to tell you. He may not tell you what you would like to hear.

I don't mean that as criticism, but that is just the way it is.

If you want to go into the intricacies of the military at a certain point you are met with a stone wall.

You can't see Mr. Laird. You can only see some assistant's secretary who says he doesn't want to comment.

What is the difference between prisons and anything else?

THE WITNESS: You speak of the President. Again, we do have an opportunity to speak to him.

This regulation here, as I read it, is a flat denial at any time of any chance to discuss the matters of personal

[126] grievance with the people that have made the allegations.

THE COURT: Is there any other comparable situation that you know of?

THE WITNESS: I don't think there are many other comparable situations.

THE COURT: Does Boston let the police force talk to you?

THE WITNESS: Sir.

THE COURT: Does Boston let the individual policeman make allegations to you concerning the way they have been disciplined or treated by the Commissioner of Police.

THE WITNESS: Well,—

THE COURT: Or, would they get fired if they do?

THE WITNESS: I don't believe there is a flat governmental policy that they cannot. If we found that there was such a one, we would be unhappy about it.

THE COURT: I understand that you are unhappy. I am really not disagreeing with you. You must be aware of what I have said in this case.

What I am trying to get at is what is so different about prisons as you see it as a reporter with broad investigative experience? Is it any different than anything else?

THE WITNESS: I think it is, your Honor. It is totally different.

[127] THE COURT: How?

THE WITNESS: It is different in the nature of this stated quite specific and explicit regulation which flatly denies us access to the people that are making the allegations.

This is a public facility. These people are being supported by public funds. The people who are given the responsibilities for keeping them are being paid for by public tax money, and they should be held accountable for the treatment and kind of operations that they are pursuing.

THE COURT: Well, then, let me pursue that with you. The FBI is involved in a hijacking situation.

THE WITNESS: Yes.

**THE COURT:** You can't talk to the agents. You can't go talk to the agents and say, "Now, tell me, who gave you the orders? Was there any warning given to the gasoline truck? Who told you to shoot the tires? Why didn't you shoot them sooner?"

They just say, "No."

**THE WITNESS:** I would say there are perhaps two particular aspects to that that would be worth discussion. One is that you are presenting a situation which is of an emergency sort. At least I assume that you are talking about an ongoing hijacking.

**THE COURT:** Or, after it is over.

**THE WITNESS:** Well, the FBI has been prepared to explain [128] and discuss their activities.

**THE COURT:** So is the warden of a prison. The warden of a prison will give you a very full statement of what happened. The warden will give you a very full statement often of a somewhat exculpatory character.

**THE WITNESS:** But, there is an adversary relationship in prisons that is perhaps missing in hijackings.

We are not talking about the allegations of the warden in the jail situations. We are talking about the allegations made by the prisoners themselves. These are the people we are trying to talk to, not the wardens.

In fact, we can talk to the warden. That is the problem. The warden has his own interest at stake. He is subject to all of the inclinations of human nature that most individuals are. When pressed under suspicion of malfeasance or some kind of incompetency, he is obviously going to deny them flatly.

If we as press people who are trying in a responsible way to get a full dimensional picture of these charges—we are absolutely and hopelessly handcuffed if we can't go to the other side. It is an unfair situation. It is an infringement both on our own abilities as a free press and not in the interest of the public at large which has a stake in the wellbeing of the institutions that they are [129] supporting.

**THE COURT:** I have tried to analyze it in my own mind. The only distinguishing factor that I can see is that in other places in our society, if an individual de-



sires to bring to the attention of the press a grievance of some kind, regardless of the rules pertaining to him, he can do so. He may forfeit his job, or he may even be subject to criminal penalties, if he breached security or something of that kind. But, he had his own right to do that.

THE WITNESS: That is true.

THE COURT: And, take the consequences.

And, I can't think of any other situation in our society where citizens are prevented from having any choice about the matter whatsoever.

THE WITNESS: I can't either.

THE COURT: I mean, if a soldier talks, he will be disciplined. He may be shot, but he has still the opportunity to make his choices. And, I can't think of any place else in our society where an individual isn't given that choice.

I have been wondering whether perhaps that is the differentiation, whether it is significant or not, I don't know, but the differentiation between this.

The mayor's secretary, for example, up in Boston, or some other official's secretary knows she is going to lose her job if she tells you about some kind of bribe or some kind [130] of corruption that she has observed, but she has that choice, doesn't she?

THE WITNESS: That is true.

THE COURT: And, the prisoner has no choice.

I don't know whether that is the only difference, but it seems to me that is the thing that makes this of particular concern, because there is no access even where the person who wishes to present to the press a grievance has any alternative but silence, except a letter.

THE WITNESS: Or violence.

THE COURT: Except the letter. He can write. Now, what is wrong with his being able to write?

THE WITNESS: Well, writing is a very ineffecient and inadequate way of conveying—of communicating. We know that an interview is a dynamic process.

A police detective seeking information from a suspect does not communicate by mail. If he did so, he would find it extremely ineffective.

You obviously in the course of an interview—it is a dynamic process. It goes off in many avenues and can be pursued instantly on a face-to-face confrontation.

By mail, obviously, presuming that the inmate can communicate by mail, which I think is somewhat questionable, you don't—you simply don't get the depth and scope of information that you do in a face-to-face interview.

[131] You also don't get that ability which I have referred to before to evaluate the credibility of the individual who is making this allegation.

In fact, you don't even know whether the individual who is writing this letter is the one that is making the allegations. It could be somebody entirely different.

We are operating in limbo, really, when we are dependent upon something that comes from somebody when we can't even establish who wrote the letter, assuming that it is comprehensible to begin with.

MR. WILSON: You have asked my questions, your Honor. I have no further questions.

THE COURT: I didn't mean to do that, Mr. Wilson.

MR. WILSON: It is perfectly all right.

### CROSS EXAMINATION

BY MR. KATZ:

Q Mr. Leland, other than the two matters that you discussed earlier in your direct, you have had no experience in prison journalism, have you?

A None except those two.

Q Have you ever actually visited a prison?

A Yes, I did have that interview in the Baltimore prison that I referred to.

Q What prison was that?

A A prison in Baltimore. I am not sure. It was a big [132] fortress-like affair down in the middle of Baltimore.

Q Baltimore, Maryland?

A Yes.

Q Now, with respect to—

**THE COURT:** Do you send reporters in to interview the prisoners?

**THE WITNESS:** In this particular instance—

**THE COURT:** No, I mean, have you had prison stories where you were sending reporters into prisons?

**THE WITNESS:** Yes, we have from time to time. We have a lot of other aspects of society that we are interested in. This is only one of them.

**BY MR. KATZ:**

**Q** Now, your Spotlight Team, or whatever you referred to earlier, that has not gone into the prison situation, has it?

**A** Well, I was operating as a member of the Team when I did this interview in connection with this boy that pulled his eyes out.

**Q** When was this?

**A** I believe this was in the spring of 1970.

**Q** Now, the people that you interviewed in the jail were others, not the gentlemen that pulled his eyes out?

**A** Well, I did interview the prisoner that pulled his eyes out. He was not in jail at the time.

**Q** He was not in jail.

[133] **A** The person that I interviewed in jail was supposed to have been arrested at the same time that he was. The man that pulled his eyes out had been let out of jail because of that.

**Q** What was your purpose in interviewing this gentleman, sir?

**A** The accomplice?

**Q** Yes.

**A** Well, actually to try to establish from his point of view how—what kind of an individual this man was, and whether he was a reliable person, or whether he was paranoid or freaked out or just how good a source he was.

**Q** Could you not have achieved the same purpose by finding out who this man's friends were who were not in jail and interviewing them?

**A** I am sorry.

**Q** I say, could you not have achieved the same purpose that you wanted to accomplish by interviewing the man

in jail by learning the names of friends of the fellow who pulled his eyes out who were not in jail and asking the same questions of them?

A I suppose it is possible. It just turned out that this was his closest friend, and he happened to be in jail.

Q Now, the Charles Street Jail incident—this was last week?

[134] A Yes.

Q You did not personally cover this story?

A No, I didn't.

Q How did this matter come to your attention initially?

A Well, as acting managing editor, it came to my attention in the course of a news conference where this information was conveyed that there had been a riot at this jail.

Q I am sorry, sir. Could you speak up a little bit. I have trouble hearing you.

A The information came to me in the course of a news conference, which is a time of day when stories are presented to the editor. I was acting editor at the time. It came to me in that interval.

Q By news conference, you mean a news conference held by the warden over there?

A No.

THE COURT: The newspaper's morning conference to determine the stories they would cover, and what stories they would play up, and who would take what assignment. That happens with every newspaper every day. That is what you are talking about, isn't it, sir?

THE WITNESS: Yes, sir.

BY MR. KATZ:

Q Very well. The question I asked though is how did you first learn that something was going on in the Charles Street [135] Jail?

A I can't remember whether in the course of the day I had gotten a report from a reporter, or whether it came at that conference that I was referring to. But, at some point in the day, I was told that there had been a riot at the jail.

Q What did you do?

A I indicated to the city editor we should do our best to get as much information about this riot and the background of it and why it occurred as possible.

Q And, in order to accomplish that, what did you do?

A What did I do?

Q Yes. Did you send people out?

A The city editor then assigned reporters to that job.

Q And, what did these reporters do to cover the story?

A They went to the jail and listened to a press conference held by the warden or the sheriff actually, who acts as warden, and also to the lawyer who represented the inmates inside.

Q Were you permitted to enter the jail?

A I am not clear whether the press conference itself was held inside the jail. I believe it probably was. Certainly not within a cell block or within the vicinity of the prisoners themselves.

Q Do you know whether your reporter was permitted to [136] tour around the jail?

A I don't believe that he was, no.

Q Do you know if they have some policy over there at the Charles Street Jail which prohibits all access of the media?

A I think it is a fairly spontaneous policy given the situation that arises. If the sheriff doesn't feel it is in his interest to let the press in to talk to the prisoners, he doesn't give permission.

Q Now, you are aware, are you not, having read that statement that you have in front of you, that under the policy that is at issue in this case, the inmates of institutions have the right to write free and uncensored letters to the media?

A Yes.

Q And, that the medias have the right to visit the institutions and tour the institutions?

A Right.

Q And, for the most part, excepting some emergency situations, see anything that they want.

A Right.

Q And, during the course of such tours they may engage in conversations with inmates whom they might run across. Now, do you feel that—

MR. CALIFANO: Your Honor, I think Mr. Katz should explain conversation.

[137] THE COURT: I understood what he meant by conversation. He doesn't mean conversation. He means a word or two.

THE WITNESS: Could I ask one question in connection with this? Is it possible under this regulation for the newsmen to ask specifically to talk to, you know—

BY MR. KATZ:

Q An identified inmate?

A Identified inmate.

Q No.

You would not consider this policy to be a total restriction on the media to cover the affairs of federal institutions, would you?

A Well, I don't think it is a total restriction, but I think it is a very unsatisfying one from my point of view as a working newsman.

Q And, this is for what reason?

A For the reason that it is clear that we wouldn't be allowed to talk to the very people that we are there to investigate. We would, I assume, be allowed to talk to the odd inmate who may or may not have anything to do with the situation that brought us there in the first place.

Q Now, isn't it true though that under that policy statement you would be able to check out most allegations made by prisoners, say, which would have been received by mail, to determine whether they had any substance or not?

[138] A This is not at all clear to me. I mean, here I am walking through the prison, and I happen to pass a guy who is cleaning dishes, and I stop probably in the company of a prison official, and I am asked or I have the opportunity to question him about something that he may not know anything about, in the presence of some-

body who probably would be quite interested in how he responded.

This is not giving me an opportunity to interview in depth and in some degree of isolation the individuals who have contacted me specifically with a grievance.

Q Have you ever personally received or seen any correspondence from prisoners making accusations against prisons—grievances?

A I believe I have. I wouldn't be able to give you precisely. I could give you an impression. I can't recall specific allegations.

Q I don't want an impression. I want to know if you can state any specific grievance which you have received.

A I couldn't.

Q All right.

Would you Honor indulge me?

THE COURT: Yes.

BY MR. KATZ:

Q Based on the statement which you have in front of you, it is possible, is it not, for you to write a story?

[139] A You can write a story about virtually anything at any time. But, I feel that the regulations that are before me here would make it virtually impossible to write a responsible story both from the prisoners' point of view and the institution's point of view.

Q But, as a matter of fact, you did, did you not, under what you describe as apparently being more stringent restrictions than those you have in front of you, nevertheless, you went ahead and wrote a story about the Charles Street situation, didn't you?

A I did. And, I felt it was very very irresponsible.

Q Thank you.

THE COURT: You are excused. Thank you, sir.

(Witness leaving stand.)

THE COURT: All right, Mr. Katz. You have some witnesses you want to put on?

MR. KATZ: Yes. Mr. Alldredge.

THE COURT: All right.



Whereupon,

NOAH L. ALLDREDGE

was called as a witness, and having been first duly sworn by the deputy clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KATZ:

Q State your full name and residence.

[140] A Noah L. Alldredge. U. S. Penitentiary Reservation, Terre Haute, Indiana.

Q What is your occupation?

A I am warden at the institution of the U. S. Penitentiary.

Q Do you report to the Federal Bureau of Prisons?

A Yes, I do.

Q Are you the same Mr. Alldredge who has given testimony previously in this case?

A Yes, I am.

Q And, at that time you were the warden of the U. S. Penitentiary at Lewisburg?

A That is correct.

Q Mr. Alldredge, when did you become the warden at Terre Haute Penitentiary?

A July 7, 1972.

Q Would you describe to his Honor what type of institution the Terre Haute Penitentiary is?

A Terre Haute Institution, your Honor, is an institution consisting of a complex of two institutions. The main institution has a population of approximately 1000. About one quarter mile from that institution there is a farm camp with a population of 300.

The main institution has a double fence surrounding it. It has both cell blocks—domitories and inside cell blocks, sir.

[141] Q How is this institution characterized as to degree of security?

A It is considered that it can handle up to and including maximum security prisoners.

Q What is the present inmate population?

A 1346 when I left the institution—in both institutions.

Q And, what is the general range of offenses for which these persons are incarcerated?

A Anything that would receive a sentence exceeding a year and a day up to and including fifty-year sentences for violent crimes.

Q Are these all sentenced prisoners?

A Yes, they are.

Q All right.

A Excuse me. Occasionally we do receive a study case from the District Court Federal judges asking us to do a study—psychological study.

THE COURT: Under 4208?

THE WITNESS: Yes, sir.

BY MR. KATZ:

Q Are all of your inmates committed from Federal Courts?

A Yes. Oh, we do have—Yes, they are all committed under Federal Court except those who are transferred to the institution from state jurisdictions by authority of the Director of the Bureau of Prisons.

[142] Q Why are these persons transferred to Federal Institutions?

A There might be several reasons. Protection of the person from reprisal from some other group of prisoners in another institution, or it is possible that they can constitute a threat in the opinion of the Commissioner and Director of Corrections for that particular agency, and they ask us to take them because of their danger and threat to that institution.

Q How many do you have at the present time who are in that category?

A We probably have—I can't give you an exact figure. Probably five or six.

Q From what jurisdictions do they come?

A They would come from any jurisdiction.

**Q** Do you know in the particular cases of the ones that you have now?

**A** Well, I do know, for example, that we do have two from the State of Massachusetts. We have one from—I believe Maine, but I can't—I have only been there four months, and I guess I have a particular reason for being familiar with the two from the State of Massachusetts. That is why I do bring this out.

**THE COURT:** They also take people from this jurisdiction.

**MR. KATZ:** I beg your pardon.

[143] **THE COURT:** They take people from our Court. They take people at Terre Haute that are convicted of local offenses.

**MR. KATZ:** D. C. Code violations.

**THE COURT:** D. C. Code violations.

**THE WITNESS:** That is correct.

**THE COURT:** If they are a certain type of prisoners. I have several out there.

**THE WITNESS:** Yes, sir.

**THE COURT:** They are serious offenders.

**MR. KATZ:** Yes, your Honor.

**BY MR. KATZ:**

**Q** Do you have many troublesome prisoners?

**A** I think you can best categorize this by saying that you would have ten percent of most prison population in most penitentiaries that would be—including Terre Haute, that would be difficult prisoners, and of that group, five percent would probably be your most difficult, and those most inclined to create problems in the administration of the institution.

**Q** What type of problems do they generally create?

**A** Well, there might be assault to officers. There might be advocating violence in the institution. There might be advocating work stoppage in the institution—usually non-violent, or hopefully non-violent. There could be individual confrontations in work areas or recreational areas [144] intended to disrupt the operation of the institution.

**THE COURT:** You have some psychotic or near psychotic.

THE WITNESS: Near psychotic, yes, sir.

BY MR. KATZ:

Q Warden Alldredge, did there recently come a time when Terre Haute Penitentiary was visited by one George Mische, M-i-s-c-h-e?

A That is correct.

Q And, when did this gentleman visit Terre Haute Penitentiary?

A October 6th, I believe.

Q Of this year?

A Yes.

Q Who was Mr. Mische?

A Mr. Mische was a former prisoner at the United States Penitentiary at Lewisburg, Pennsylvania. He was there about a year when I was there, and later released through CTC, Washington, D. C.

Q What is CTC?

A I am sorry. Community Treatment Center.

Q All right. Proceed. In what capacity was Mr. Mische visiting the Penitentiary?

A As a representative and consultant to Congressman Dellums.

Q And, what did he desire to do in the course of this [145] visit?

A He had identified four prisoners with whom he wished to speak, and he wished to tour the institution.

Q Who were the four prisoners to whom he wanted to speak?

A I believe I can name their last names. One was Arthur Banks. Another was a person named Scalessa. (Phonetics.) Another was named Brown. And, the fourth name skips me, or did I name four?

THE COURT: You named three. It doesn't make any difference what their names were.

THE WITNESS: All right.

BY MR. KATZ:

Q For what offenses were these people convicted, if you recall?

A Arthur Banks was a violator of the selective service laws. Scalessa was, I believe, involved in a conspiracy with Government property totalling something like \$65,00, if I remember. Now, I remember the other person. The other person's name was Radell. (Phonetics.)

Q Radell?

A Yes.

Brown—he has been transferred to Detroit Community Treatment Center. I don't recall having seen his record recently, so I can't tell you—Radell had been charged with [146] possession of illegal weapons and destruction of Government records.

Q Prior to these interviews, were any of these four individuals known to you as troublesome prisoners?

A Primarily Arthur Banks is known quite widely throughout the prison system as being a troublemaker. He was transferred to me from the U. S. Federal Corrections Institution at Danbury.

THE COURT: I would like to be able to join this hearing and understand what it is all about. A Congressman sends somebody out there, and interviews were allowed.

MR. KATZ: Your Honor, we intend to connect this up.

THE COURT: I am not going to sit here and listen to something that seems totally irrelevant unless you give me some indication of pertinence.

A Congressman sends a fellow out to talk to some people, and they let him talk to them. Is that what happened, and they caused trouble?

MR. KATZ: Well,—

THE COURT: Is that it?

MR. KATZ: The point that we are going to make is that the conditions under which these interviews were conducted were the same type of conditions that Plaintiffs contend they should be permitted to have with respect to news media, and furthermore that reports based on these interviews were [147] published in newspapers, and there were certain effects as to which Warden Allredge is prepared to testify.

THE COURT: I guess that is remotely relevant.

MR. KATZ: It is very relevant, your Honor.

**THE COURT:** I don't see that it is very relevant. It wasn't a newspaper reporter. I have a press problem, not a Congressional relations problem.

I would say that the fact that they let a Congressman's assistant in and wouldn't let the press in may be highly irrelevant to the prison authorities. It would seem to me to suggest the arbitrariness of the policy.

Under what possible theory can you justify letting in a Congressman's assistant and not letting in newspapermen? I mean, aren't you just demonstrating, in effect, the selectivity.

**MR. KATZ:** I don't believe so, your Honor. I believe this question came up at some point earlier in these proceedings. We made a point of that.

**THE COURT:** You did let a Congressman's assistants in, and Congressmen were allowed in.

**MR. KATZ:** Congressmen being Government officials that have some responsibility for oversight with respect to Federal Bureau of Prisons and institutions.

**THE COURT:** Does this Congressman have that? Was he on any committee that had anything to do with this?

[148] **MR. KATZ:** I don't know, your Honor.

**THE COURT:** Well, you may proceed. I am having difficulty seeing the relationship.

If a Congressman gives a report of an interview to a newspaper, that could be a totally different kind of report than a newspaper man would make, because I take it he was there to grind an ax. I take it the Congressman was out there to grind an ax, not to get at the facts.

**MR. KATZ:** We would hope that this is not the case.

**THE COURT:** You would hope that? Is that your experience in Washington, Mr. Katz?

All right, you can proceed.

**MR. KATZ:** Thank you, your Honor.

**THE COURT:** But, I would like to get down to the case.

**MR. KATZ:** All right.

BY MR. KATZ:

Q Did these interviews in fact take place, Mr. Alldredge?

A Yes, they did.

Q And, were these face-to-face interviews?

A Yes, they were.

Q And, how long did they go on?

A The shortest about 35 minutes, and the longest nearly two hours.

THE COURT: I take it they were unsupervised interviews, were they?

[149] THE WITNESS: No, sir. They were supervised.

THE COURT: Then, they were not the kind that the press is asking for. In other words, they were supervised by the prison authorities?

THE WITNESS: Yes, they were.

THE COURT: The prison authorities were present.

THE WITNESS: Yes.

THE COURT: Very well.

BY MR. KATZ:

Q Did you give any instructions respecting the nature of the supervision?

A Only two. That they would be supervised, and there would be no exchange of documents between the parties involved, and they would not be subject to overhearing the conversation.

THE COURT: There was somebody there.

THE WITNESS: That is correct.

THE COURT: No contraband.

THE WITNESS: That is correct.

THE COURT: But, the man wasn't listening to what was being said?

THE WITNESS: He listened if they spoke loudly, but they could have a private conversation if they wished.

THE COURT: I see.

BY MR. KATZ:

Q If the parties to the interview had objected to his [150] overhearing, then he would not have been required to stay there and overhear, at least.



A No. They could have talked in a low tone, or he could have stood back far enough from them that they could have conversed privately if they cared to.

Q I see. Now, to your knowledge did the other inmates of the institution know that these interviews were taking place?

A Yes, they did know.

Q Now, did Mr. Mische stop by to see you after he concluded his interviews?

A Yes, he did.

Q Did you have a conversation with him?

A Yes.

Q What was the substance of that?

A In general Mr. Mische was explaining to me and discussing the improvements in the areas of prison reform that he had been able to accomplish and other inmates in the State of Pennsylvania. And, I told him of some of the improvements that I thought I was making at Terre Haute. I did not permit him to tour the institution, you know, as he requested. You brought this out earlier. He asked—He was concerned about this and asked why I had not allowed him to, and, of course, my response to him was that I did not trust him.

Q Why didn't you trust him?

A He had been permitted to tour the institution at the [151] U. S. Penitentiary at Lewisburg, including the segregation units, and talked to any inmate that he wished, including those in segregation, and then he then talked to me and others talked to me later, and did not give my response to the allegations made in any news media after that.

Q All right.

On this occasion did he discuss with you any specific allegations made by any of the persons he interviewed?

A He did not.

Q All right.

Did there subsequently come a time when a matter based on these interviews was published in the newspapers?

A That is correct. The Associated Press, I believe, made the first release.

**THE COURT:** Well, there was no way they could check it, was there, under your regulations? They couldn't come in and ask the prisoners what they said, because you wouldn't let them in. Isn't that right?

**THE WITNESS:** The press at that time?

**THE COURT:** If the press had come to your penitentiary and said, "Look, this Congressman's Assistant says that this is what these men have told me, and we want to go talk to them", you are prohibited from letting them do that.

**THE WITNESS:** They did not name them by name, judge. They could have talked to me, and they could have toured the [152-155] institution.

**THE COURT:** I know. I am talking about talking to the prisoners that were involved. They couldn't do it, could they?

**THE WITNESS:** No, sir, not if they named them. That is correct.

**THE COURT:** So, there was no way they could check on what the Congressman told them that the men said, is that right?

**THE WITNESS:** I think they could have asked me.

**THE COURT:** Oh, yes, but you weren't there.

**THE WITNESS:** Yes, I was.

**THE COURT:** But, you weren't there when the prisoners talked.

**THE WITNESS:** No, sir.

[156] **BY MR. KATZ:**

**Q** Do you know whether Mr. Mitchie is a regular employee or staff member of Congressman Dellums?

**A** To the best of my knowledge he is an unpaid consultant to the congressman.

**Q** Are you aware of any of his other activities, any personal awareness of his personal activities?

**A** Yes. He is a member of a committee—I doubt if I can cite the title, but it is something like The National Committee for Justice Under the Law.

**MR. KATZ:** I would like to have this marked as Government Exhibit 1 for Identification.

**THE DEPUTY CLERK:** Government Exhibit No. 1 marked for Identification.

(Government Exhibit No. 1 marked for Identification.)

**BY MR. KATZ:**

**Q** Mr. Alldredge, I will show you a document which has been marked Government's No. 1 for Identification. I ask you if you recognize it?

**A** Yes, I do.

**Q** Would you tell His Honor what it is, please?

**A** It is a press release by the Associated Press on November 2nd regarding a by-line by Tom Sedgewick. In this press release—would Your Honor care for me to read it?

[157] **THE COURT:** It is up to Mr. Katz. I am waiting to see the relevance of this, and anything he wants to develop I will listen to.

**A** "An independent committee concerned with penal reform said today some of the nation's prisons are hot beds ready to erupt into strikes and possible riots. George J. Mitchie, a former convict and member of the National Coordinating Committee for Justice Under Law said one of the worse was the U.S. penitentiary at Terre Haute, Indiana, and unless somebody steps in and does something there may be another Attica there. Mitchie told a new conference, 'that is a real hell hole—shocking, what we run into in these places.' He declined to discuss Terre Haute further until the committee hears first from the Bureau of Prisons to which it has sent a report. Mitchie and Frank Calahan, another former convict and committee member have visited prisons and consulted with Mr. Ronald V. Dellums, Democrat of California, and interviewed inmates and administrators. The National Coordinating Committee for Justice under Law founded last May is an organization comprised primarily of exconvicts and including professionals and laymen doing the work of umbuds

people and advocating comprehensive change of the legal justice system. They cited instance after instance of what they call intimidation and harassment of prisoners who talked with or who wrote to their congressmen. [158] "Mitchie said the standard procedure for prisoners who complained was to transfer them to another institution."

MR. KATZ: Thank you.

THE COURT: Was that true or false?

A I responded that it was false.

THE COURT: Did the papers print your denial?

A The local press I know did. I do not know whether it appeared in the national press.

BY MR. KATZ:

I would like to offer these documents as Government's Exhibits 2, 3 and 4 for Identification.

THE DEPUTY CLERK: GOVERNMENT'S Exhibits 2, 3, and 4 marked for Identification.

(Government Exhibits 2, 3 and 4 marked for Identification.)

THE COURT: Why did you let the man in—Mr. Mitchie—why did you let him in? You say you had previous dealing with him and you found he was dishonorable, distrustful person, why did you let him in?

A I didn't want to, Your Honor. He was under the auspices of the congressman and I discussed it with a lot of people, and I think I made a mistake—

THE COURT: —I wasn't suggesting that, Mr. Alldredge—

A —I did. I thought perhaps I would lay myself open to [159] criticism, and the institution to criticism and that I had to take this step to ocooperate with the congressman, I suppose.

THE COURT: Because he was a congressman?

A Yes, sir, because he was representing a Congressman and he had identified the people with whom he wished to speak and a letter had been sent to the Director of the Bureau of Prisons making this request, and so al-

though I would have had the authority and the Director supported me I chose to allow him in.

THE COURT: But if there was a newspaperman that you considered responsible working for a responsible newspaper, and your experience with him had been he was responsible and fair you could have let him in?

A I had requested, Your Honor, the local press do an in-depth survey of the local institution and were in the process of doing this I had given him permission to talk with any inmate with who he wished to speak including those men in segregation. They had taken pictures of every type housing from onehalf of the institution up to the time I had a problem which I think will be brought out.

THE COURT: Warden, that was a violation of your policy, wasn't it?

A Not a tour.

THE COURT: That isn't what you said to me. You said [160] in addition to the tour they were permitted to talk individually to prisoners.

A Not identified prisoners as they go about the institution

THE COURT: You mean on one of these walks?

A Yes, sir.

THE COURT: That is consistent with the policy.

BY MR. KATZ:

Q Mr. Alldredge, I show you Government Exhibits 2, 3 and 4 and ask you if you recognize them?

A Yes, I do. These are articles that appeared in the two newspapers in Terre Haute, Indiana and the other in the Indianapolis Star newspaper.

Q What are the dates shown on those articles?

A November 2nd, 1972 on all.

Q Are the newspapers in which these articles appeared circulated throughout your institution?

A Yes, they are.

Q And to the best of your knowledge were these newspapers read by inmates?

A I didn't quite understand.

Q To the best of your knowledge were these newspapers read by the inmates?

A I know they were.

MR. KATZ: At this time I would like to offer Government Exhibits 1 thru 4 into evidence.

[161] MR. CALIFANO: Your Honor, I don't see the relevance.

THE COURT: I don't even know what these are. My feeling is both sides should be able to make the fullest kind of record.

MR. KATZ: I thought we'd be able to save Your Honor's time by not having Warden Alldredge re-read them.

THE COURT: No need for him to read them. I will read them now. I will receive them into evidence. Let me have them. (Handed to the Court.)

(Government Exhibits 1-4 received in Evidence.)

BY MR. KATZ:

Q Warden Alldredge, at the same time these stories were published was this subject matter also covered on radio and TV?

A Yes, sir. It was covered over and over by the radio stations beginning November 3rd, perhaps earlier, but I know November 3rd. Also covered a minimum of three times in its entirety each day by the two local television stations and there are four radio stations in Terre Haute.

Q Did you watch or listen to these broadcasts?

A Yes, I did.

Q Could you relate the general tenor very briefly?

A Well, they were—the problem of Terre Haute being a hell hole and another Attica would develop there if someone didn't step in was the principal direction and content of the programs.

[162] THE COURT: In other words they didn't, as the newspapers did, give equal space to your denials?

A The newspaper did give equal space.

THE COURT: Television didn't?

A They later did, yes, sir. In fact, they paraphrased my response and done it quite well, I think.

THE COURT: You made it very thorough, obviously?

A Yes, sir.

THE COURT: What is the point, Mr. Katz, I am confronting at this stage? An irresponsible man, known to be that, is allowed into the prison, makes false charges, the warden denies them and the television and newspapers print both sides. What has this got to do with the press?

MR. KATZ: Well, the press printed these stories; we submit that—

THE COURT: —they had no access to the prisoners, so they printed what people said. They took a press release from the warden, a very fine, good, well thought out, careful press release and took a statement from the congressman's representative and printed them all, isn't that what happened?

MR. KATZ: That is in essence what happened thus far. I would like to ask the warden what happened further.

THE COURT: Very well. I assume there was turmoil in the prison and I will be glad to hear his testimony, but I can't see what it has to do with what I have to decide, and that is [163] whether newspapermen should be given access to prisoners who want to talk with them.

MR. KATZ: It is our submission that what occurred in this instance could be just as likely to occur had this been a man from the news media rather than the gentleman who did in fact conduct the interviews, we don't see necessarily any difference.

THE COURT: Is that not also true, Mr. Katz, with respect to any newspaperman who goes in on a tour and talks to the warden and writes an unfriendly story about the institution? I mean under your own policy. What difference would it be? I don't see it focuses in on present access to inmates.

You may proceed and make your full record but it would seem to me that a newspaperman, an unfriendly newspaperman—I assume there are lots of them as well as friendly ones, who goes in and purports to have an interview with this gentleman who is a very experienced, competent man and walks around through it and he can say I observed cockroaches, men told me terrible things



about homosexuality, etc., he can print it and that happens, you permit that now under your policy so I don't see how this ties into the narrower issue which I thought was in front of me which is newspaper access to individual prisoners who want to talk.

But you may proceed, I just wanted to indicate to you my trouble with it.

MR. KATZ: All right. Thank you, Your Honor.

[164] THE COURT: What happened in the prison, warden?

A A work stoppage, Your Honor.

BY MR. KATZ:

Q When did that occur?

A Monday, November 6th.

Q Would you describe this work stoppage to the Court?

A Well, the work stoppage began that day and continued for approximately ten days. It was never a full work stoppage. I think it ranged from a high of two-thirds of the inmates not reporting for work up to and including 90% on Thursday—I can't recall the date right now, and this resulted in certain steps we did take that returned the institution to normal on the 16th.

Q So this lasted for how long?

A Ten days.

Q Did this incident have any appreciable effect on the normal function of your institution?

A Yes, it did. I mean of course in all instances such as this it requires a great deal of officer and staff supervision at great expense to the institution, or to the Bureau of Prisons in this instance and requiring some curtailment of some programs although actually we were able to maintain work call every day and we were able to continue visiting and this kind of thing. I did suspend, however, the right of the press to come into the institution proper, based upon the policy statement of the Bureau of Prisons.

[165] Q How long did that stay in effect?

A It is still in effect. The press came in the day the news broke, the first day of the story, and came out and

wanted to come in later but I would not permit them to do so.

Q As the warden of the Terre Haute Penitentiary and based on your experience and qualifications and background as we have established at the previous hearing when you testified, do you have any opinion respecting whether or not there was causal connection between these interviews conducted by Mitchie and the subsequent publication and the work stoppage that occurred a few days later that you described?

A In my judgment the work stoppage was caused by the press release by Mr. Seppey (Phonetic spelling) of the Associated Press and it began to gather momentum in the institution and I think this precipitated the work stoppage at Terre Haute.

THE COURT: So your response has been to bar the press entirely?

A No, sir. We did have a representative—

THE COURT: —I thought you said you barred the press.

A I mean where representatives of all the news media came in one day. But I had numerous requests from the press individually to come into the institution, this I did not let them. I would let them come to my office.

MR. KATZ: Your witness.

[166] CROSS EXAMINATION

BY MR. CALIFANO:

Q Warden Alldredge, is the work stoppage still going on?

A It ended November 16th, I believe is the date, Mr. Califano.

Q Was it peaceful or violent?

A Totally nonviolent.

Q Warden, if these four prisoners or any one of them had written a letter to Mr. Mitchie and told him whatever they told him in the interview and he held a press conference and said Terre Haute was a hell hole and what have you, and the newspapers printed the story, do you think the same thing would have happened?

A He did receive letters from these people which resulted in him coming to the institution.

Q You are not answering my question.

A I'm sorry. Maybe I misunderstood it.

THE COURT: I think what the warden is saying is he had already gotten letters?

A Yes, sir.

BY MR. CALIFANO:

Q So if he had simply held—you said it was the news stories which you thought caused or accelerated the work stoppage. If the news stories had been written on the basis of statements Mitchie made simply because he received letters, you would have had the same work stoppage?

A I think so.

[167] Q And the inmates could have written him letters under your policy?

A Yes; and they do.

Q Warden, did you have any other problems at Terre Haute aside from the visit of these men? Did you have any problems in the prison?

A I had many problems, yes, sir, at the institution.

Q Did you have any racial trouble at Terre Haute?

A Where there is racism there is always racial problems at any institution, yes, sir.

Q Had you had a strike at Terre Haute before his visit and the press stories?

A Not while I was there.

Q Had there been one?

A I am sure there had been. Most federal institutions have had some difficulties.

Q Had you had stabbings there before they had been there?

A I am sure there were, yes.

Q Had you had disturbances at Terre Haute before he visited there?

A Yes.

Q You think despite the fact you had all this other trouble with no stories about Terre Haute that one news-

paper story about Terre Haute that day caused a work stoppage?

A I am completely convinced, yes.

[168] Q And these other events had nothing to do with the work stoppage?

A In an institution—

Q —sir, would you answer the question? These other difficulties had nothing to do with the work stoppage?

A They only included maybe perhaps from two men fighting and the case of a stabbing to maybe fifty men involved in a fight. This is not stopping the entire institution.

Q But these things could have contributed to it. You are saying they could not have contributed to the work stoppage. I am just quoting the statement you made to the press.

A They were not related.

Q All right. Warden, staying with this incident for the moment, you made a statement that these stories were written in the press on the basis of secondhand information. What did you mean by secondhand information?

A Because Mr. Mitchie had talked to the four inmates in question and this—particularly based his leaks on information of one inmate because this inmate made no effort to keep the supervising officer from hearing the information and without ever touring the institution or seeing any of the programs of the institution, the food service or any other part of the institution, he drew this conclusion and made the press release.

THE COURT: I thought you said he had asked to tour the institution and you refused.

[169] A Yes, sir.

THE COURT: I understand then why he didn't.

BY MR. CALIFANO:

Q He really didn't have that option, did he, warden?

A No, he did not.

Q You said the secondhand information, the press was writing from secondhand information—I mean how is the press to get firsthand information about what the inmate said?

A You see I had invited, as I stated earlier, the Terre Haute Tribune staff, the president of the Wabash Valley Press Club and a photographer and another staff reporter had been invited to go into the institution and make such an in-depth survey and after this release I did invite Channels 2 and 10 to the institution, and—

Q —Warden, we have been here a long time, would you just answer my question:

How is the press to write with firsthand knowledge what these four inmates said since you criticized them for writing of secondhand knowledge what these four inmates said under your policy?

A Because it was secondhand information.

Q But how is the press to get firsthand information about what these four inmates said? Could the press have interviewed these four inmates?

A The press could have come in as a result of this and get firsthand information.

[170] Q They could have interviewed these four inmates?

A No, not these four inmates but they could have visited the institution.

Q All right. To make it clear on the record, I think you didn't quite answer the question.

A reporter for a national news organization such as one of the wire services or the New York Times or the Washington Post could not come to your prison and ask, as this congressman's consultant asked, to interview these four identified prisoners and interview them, you would have turned that reporter down?

A Yes, I would have.

Q Warden Alldredge, I would like to go back to the day, March 23, when we were here before in your testimony that day. Do you recall testifying that when you were then at Lewisburg you had some notable prisoners like Bobby Baker, James Hoffa, Martin Zweig, Adonesio, and General Turner (phonetic spellings), is that correct?

A I don't remember the exact wording of my statement but I did mention certain prisoners, yes.

Q Were all those men well known to the public?

A Yes.

Q Was Martin Zweig a leader among the inmates at the institution at Lewisburg?

[171] A He was at the federal prison at Allen Wood, 18 miles from the penitentiary at Lewisburg. He would not have been a leader of any kind at the U.S. Penitentiary at Lewisburg.

Q What was Allen Wood?

A A federal prison camp—a minimum security facility.

Q Was he a leader of the inmates at the minimum security facility?

A I could not say because I did not—I personally only saw Martin Zweig once. He was no problem.

Q He was no trouble maker?

A No.

Q Did you have any reason to think if he had been interviewed by the press he would have become a trouble maker?

A I don't think he would have.

Q Was Bobby Baker at Lewisburg?

MR. KATZ: Your Honor, I object to this. We were into all this at the previous hearing.

THE COURT: I am sure you don't mind making him your witness if you want.

MR. CALIFANO: I would be pleased to make him my witness.

THE COURT: I didn't think we were dealing with the witnesses in that fashion. You may go ahead and make him your witness. This is in the area I have been instructed by the Court of Appeals to develop more detailed testimony.

[172] BY MR. CALIFANO:

Q Was Bobby Baker at Lewisburg?

A No, he wasn't. He was received there and transferred out to Allen Wood Prison Camp.

Q To the minimum security camp?

A Yes.

Q Was he a trouble maker?

A Not to my knowledge.



Q Do you have reason to think if he had been interviewed by the press he would have become a trouble maker?

A The only thing—I don't know but he didn't want to be interviewed by the press himself. This was his statement, the only thing I know.

Q Would you answer my question, please?

A I don't think he would have been. I can't answer, you know, completely on it.

Q Was General Turner at Lewisburg?

A Yes, he was. No, he also was at Allen Wood Prison Camp.

Q The minimum security?

A Yes.

Q Was he a trouble maker?

A He was not.

Q Do you think if he had been interviewed by the press he would have become a trouble maker?

A A trouble maker? No, sir.

[173] Q Was James Hoffa at Lewisburg?

A Yes, at the U.S. Penitentiary.

Q Was he a leader among the inmates?

A He was a strong personality and well known. Yes, I would say he was a person of importance in the U.S. Penitentiary at Lewisburg.

Q Did he have inmates that followed him—into whose clique he fell, or—

A —he had friends, certain friends, but whether you would classify a clique or not I wouldn't be able to do that.

Q Was he a trouble maker in prison?

A No, sir.

Q Do you think if he had been interviewed by the press he would have become a trouble maker?

A I don't know.

Q Was Tino D'Angeles (phonetic spelling) a prisoner at Lewisburg?

A Yes, he was.

Q At Lewisburg itself?

A Yes.

Q Was he a leader among the inmates?



A He was well known to the inmates as was Mr. Hoffa.

Q Was he a trouble maker?

A No, he was not.

[174] Q If he had been interviewed by the press do you think he would have become a trouble maker?

A I don't know.

Q As distinguished from these others where you don't think they would have? You realize there is a difference in your answer as it stands on the record?

A Yes, I realize there is, yes.

Q That is all I wanted.

THE COURT: You said you had out at Terre Haute a work camp—of 300 men?

A Yes, sir.

THE COURT: That is a farm?

A Yes, sir, a farm camp.

THE COURT: Minimum security?

A Yes, sir.

THE COURT: The men allowed into town at all?

A We have men attending Indiana State University and Wabash Valley Vocational Technical Institute, and we have a full academic and vocational training program at that institution within the confines of the smaller institution. I am talking about basic adult education and things like that, judge.

THE COURT: What harm do you see would come from letting the press talk to prisoners in that institution?

A In the farm camp?

THE COURT: Yes, considering the general kind of [175] fellow there is, what he is doing, going to college in the community?

A Well, Your Honor, I can't answer your question perhaps to your satisfaction, but I believe the news media would—there are many problems, including a farm camp as it relates to different agencies of the government like the Board of Parole, their sentencing procedure, and I am still of the personal opinion that this kind of interview would tend to create problems in administration of the institution and problems of those men in the institution which do not exist otherwise because they have access

to the congress, they have access to writ of habeas corpus which they use over and over as you know; they can write anything they wish to the press; they can write any congressman and their administrative assistants; full-time employees do come to the institution and I do think this added need for this, I can't in my judgment, it would have little value for the inmate population.

**THE COURT:** I understand that. My question was, and I respect your opinion, you are an experienced man, but what harm would come? I can see it doesn't bring any value to the institution but my question was what harm would come to the institution?

**A** If the men were being interviewed, for example by the press, they'd be discussing perhaps those things they did not like about the operation of the entire penal system or the parole and probation system and administration in general, and I think this would create problems in perhaps their being able to get the most out of their incarceration.

[176] **THE COURT:** You mean they might say they are not given sufficient educational opportunities and they wish the community would give them more, and that would hurt their educational opportunities? I mean I get letters like that from prisoners almost every week complaining about the lack of educational opportunities out at Lorton which is a federal institution, and it may not even be a prison, but I get letters from that place all the time saying they want educational opportunities that they don't have. What harm would it be if these men complained about that to the press? You would like, I assume as a warden, to see them get more educational opportunities?

**A** Yes, sir, I would.

**THE COURT:** Any responsible correctional man has that in mind. They say they wish there was more drug treatment facilities there and maybe the city could do something to help, what is the harm is what I can't understand, and I respect your opinion, you are entitled to it and I am not trying to disagree with it, I am trying to understand what is the harm that is envisaged from that kind of communication? Because what we have

here is a statement by your superiors that there is a serious harm, a compelling governmental necessity to stop this type of discourse and what I am trying to figure out is what is that compelling government necessity?

A I will answer that there would be less harm in a minimum security facility but I think anything we do in a closed [177] setting such as even the farm life might be would not contribute to and help the inmate himself. I mean it would distract him to some degree because—this is an opinion, judge—that if he becomes involved in talking to the press about the problems he has either personally or the fact he did not make parole, that the parole system is unfair, that he did not receive the vocational training program for whatever reason, that he did meet the criteria when he actually didn't, that this in effect has a tendency to make this person more bitter and perhaps without any gain for him where otherwise he might be more inclined to pursue his education that we have available to him.

Maybe I am not making myself clear, but this is my feeling about it to a lesser degree than it would be inside for a different reason.

THE COURT: And what if he were right, rather than being wrong and he attracted interest from congressmen, interest from community resources, somebody came to you and said: as a matter of fact I think this boy may be right, we don't have enough training here in electronics, or modern automotive engines, maybe we will do something about it, and the next thing you know a Chevrolet dealer comes in and says he wants to help. Suppose he was right?

A The only difference, judge, is that I think the policy of the Bureau of Prisons is sufficiently liberal to permit this—

[178] THE COURT: —by other means.

A By other means, yes, sir.

THE COURT: Very well.

BY MR. CALIFANO:

Q Warden Alldredge, I think if my notes are correct, you testified that the population if we combined Terre

Haute and the camp farm nearby as about 1300 and when you were here on March 23rd you testified the population at Lewisburg was about 1850 at that time. What are the rights of the prisoners to be visited by their families at these institutions if we can legitimately total them together, what right does a man have to be visited by his wife and brothers and sisters?

A He has that right.

Q How often may they visit?

A Daily. Really the only primary restriction is that it does not interfere with the program of the individual or seriously hamper the operation of the institution. I mean if a person visited every day eight hours a day we would probably talk to him asking him to voluntarily reduce this.

Q If his wife came in every day for half an hour, would she be permitted to do that?

A Yes.

Q What rights do these inmates have to be visited by their counsel, how often can their counsel visit?

[179] A As often as is necessary.

Q Are there others who have visitation rights besides the family and attorney?

A Friends.

Q And are friends in the same category as the family? Can they visit as often?

A There would be more restrictions placed on their visiting extensively than immediate family.

Q Do you know what those rules are for example at Terre Haute where you are now and what they were at Lewisburg?

A They are comparable except we have visiting five days per week at Terre Haute where we had seven day visiting at Lewisburg. That is the primary difference.

THE COURT: When anybody starts abusing or taking unfair advantage you cut down and you tend to favor members of the family and lawyers, or religious counsel?

A Yes, sir.

BY MR. CALIFANO:

Q Do you have facilities at Terre Haute and at Lewisburg for visiting rooms?

A Yes, we do have a visiting room.

Q How many people can visit in those rooms, roughly? Take Lewisburg first.

A It would be a guess. I would think probably 75 to 100 total could visit comfortably at Terre Haute.

[180] Q How about Lewisburg?

A I would think it would be approximately the same.

Q Might be a little larger because the population is larger?

A It is not much larger, maybe somewhat larger.

Q 75 to 100 people at any one time?

A Yes.

Q So if they were there for an hour or so you could have three or four times that many in a given day?

A As you describe it, I believe—what did you say?

Q I said 75 to a 100 people at any one time, and if each person were there for an hour say, if 75 people came in at 9:00 o'clock in the morning for an hour to visit, relatives, to visit, another 75 could come to this facility?

A They could but this is not what happens.

THE COURT: You have visiting hours in a point of time during the day.

A That is correct. But ordinarily when a person comes to visit they stay all day. You see different people are visiting different inmates on different days.

BY MR. CALIFANO:

Q I see. Do these visitations create undue burdens on you—family and relatives and friends?

A In what way?

Q I mean is it an undue administrative burden on the [181] prison at Lewisburg or Terre Haute? Would you like to cut it back?

A When we are crowded, yes, when we visit down the hall and this kind of thing.

Q Right, but for the most part to have the appropriate number—75 to 100—which you testified could visit comfortably at Terre Haute, when you have that number on a given day is that an undue administrative burden?

A No. We are staffed for this.

Q You are staffed?

A Yes.

Q Do you have the full 75 to 100 every day?

A No, we do not. Some days we will have more than this and then it becomes somewhat of a problem. Other days we will not have it.

Q Do you have more on a Sunday, is that what happens, a weekend, or—

A —usually we have more on the weekends than during the week, yes.

Q During the week from Monday to Friday you would have less than your full complement of 75 to 100?

A We may have 200 on the weekends and we may have ranging from 25 to 75 during the week.

Q Would it be fair to say that on most week days you have fewer than the full amount you can comfortably handle?

[182] A Except on holidays that would be true, yes.

Q Virtually on all week days that is true?

A Not virtually all week days because there will be periods of heavy visiting which will continue every day the visiting room is open including the week days.

Q On Christmas holidays?

A Just summer, good weather—

THE COURT: —Mr. Califano, I am not going to sit beyond 4:30 and I do want to accommodate the gentleman also from Florida. I have some sympathy with a man who can't get home tomorrow and we are trying to get him out today. I don't want to cut you off but I am wondering, I take it Mr. Alldredge also has to get off today and I hope you have him scheduled and do the best you can to accommodate the U.S. witnesses on these matters.

MR. CALIFANO: I will, Your Honor.

Warden Alldredge, do you ever take away visiting privileges for one prisoner if he does something wrong? Does that happen?

A Yes.

Q What would be a typical example? He hits another prisoner, you might take away his visiting privileges?

A No. It has to be in relation to violation of visiting regulations.

Q If he violates the visiting regulations you would?

A It might adversely effect his visiting privileges, yes.

[183] THE COURT: If he says somebody is his uncle and it turns out to be somebody that has been with him in a caper you might cut him off for a while?

A Yes.

BY MR. CALIFANO:

Q But you would not give him that punishment for anything he did in the prison—fight with prisoners, hit a guard, or steal something—you would still let him have his full visiting privileges?

A That is correct. It might depend on the character of the infraction. If we consider that he represented a security problem we might limit it to a one hour visit under supervision and leading from that up to a full visit in the visiting room.

Q Warden Alldredge, when you were here before and testified about Lewisburg you testified about a peaceful strike there, that a peaceful strike had taken place there and there was an inmate negotiating committee there, is that correct?

A This is different circumstances. I can't recall my exact words but I believe my testimony implied that it was a peaceful work stoppage because I locked everyone up.

Q That may be correct but there was an inmate negotiating committee at Lewisburg?

A The inmates had an inmate negotiating committee, yes.



Q Were any of the people I mentioned earlier—Bobby Baker, Martin Zwieg, Hoffa—any of those people on the negotiating committee?

[184] A No, they were not. I believe Hoffa had been released and the others were at Allen Wood.

Q Were any national figures, famous prisoners on that negotiating committee?

A I am sure there must have been.

Q Can you remember them?

A I can only name one you named earlier and that would be Tino D'Angeles.

Q He was on the negotiating committee?

A No, he was not.

Q No, I am asking you were other national figures like those members of the negotiating committee that the prisoners, that the inmates formed after the strike?

A To the best of my knowledge none were nationally known figures.

Q When prisoners come to Lewisburg or Terre Haute do they go through a screening process upon arrival?

A Yes, they do.

Q Could you describe that?

A When a prisoner is received from the U.S. Marshal he is escorted to the—

THE COURT: —what is the relevance of this?

MR. CALIFANO: Your Honor, it goes to the point of fact that it is my understanding at least that prisoners were given tests of various kinds which enable wardens and others in [185] the facilities to distinguish among them in terms of their security problems and in terms of their other problems—

THE COURT: —Mr. Califano, those all change. The best hopes of men are sometimes disappointed and the worst hopes of men sometimes don't take place, men change in prison.

I really think you gentlemen ought to assume the Court knows a little about—

MR. CALIFANO: —we assume this Court knows a little about it, Your Honor.

THE COURT: I am in constant communication; I visit prisons; some people react quite unexpectedly, don't

they, to your original appraisal of them for worse or for better?

A Yes.

THE COURT: And you change them when that happens?

A Yes.

THE COURT: I mean I don't see where that gets you. I have not in anything that I have done in this case suggested that the Bureau of Prisons cannot bar the press from interviewing particular prisoners. I mean I thought I made that absolutely clear.

MR. CALIFANO: I do realize that, Your Honor, but in the Court of Appeals opinion, the factors it lists on No. 4 is: Whether there may be a valid basis for a ban in the interest of avoiding impairment or good order as to a particular prisoner or prisoners even in the absence of a prior history of unruliness [186] or disruptiveness.

THE COURT: Aren't they talking there again in the "big wheel" context?

MR. CALIFANO: I was just going to continue with 5:

Whether it is unfeasible to pursue a flexible approach to allowance of private personal interviews with appropriate scope for the judgment of responsible prison officials and their consideration of administrative convenience or necessity.

THE COURT: Those matters are the burden of the government, not the burden of the plaintiff. But if you want to pursue that.

I have been expecting testimony, which I haven't heard yet and assume I will hear, because I asked for it at pre-trial with respect to the various categories and classifications of prisoners in different categories, etc. I assume there are competent witnesses coming on those matters. We have had little here. I took that to be more the kind of thing, I tried to suggest by questions about the farm camp, the work camp. In other words there are a group of people because they are not considered serious risks and having high potential and approaching some community release are put there and I therefore

asked questions as to whether this gentleman felt that group should be treated the same way as the more hardened kind of criminals that [187] the judge out in the state of Washington was talking about when he was talking about the prison out there, but I assumed they are talking—they may not be, Mr. Califano, but I assumed the Court of Appeals was talking about general categories. This, as I understand it, this rule even operates to prisoners who are released to work in General Motors plants, they were going home every weekend. This rule still applies. I thought what we were talking about was that kind of category rather than psychological judgments about potentiality of individual prisoners to make false statements to the press. But perhaps not. It seems to me that is a very difficult line of inquiry.

**MR. CALIFANO:** Your Honor, there is some way which a judgment is made as to who goes to a camp virtually upon arrival and who goes to lesser security.

**THE COURT:** That depends in part on the sentence and part on appraisal of the man.

**A** That is correct. His family relationships, how much physical resources he might have, all these things enter into it as well as psychological tests.

**THE COURT:** All right.

**BY MR. CALIFANO:**

**Q** Let me simply state on the basis of all those things, you make judgments as to whether—

**A** —I do not, the classification committee or classification teams make these decisions.

[188] **Q** The classification teams of the Bureau of Prisons makes these kinds of individual decisions about each inmate that comes to the federal institutions?

**A** That is correct.

**THE COURT:** And their guess is sometimes who wrong either way is based on performance in the prison?

**A** They sure do, judge.

**BY MR. CALIFANO:**

**Q** Warden Alldredge, since you have been at Terre Haute—is Terre Haute a maximum security institution?

A At one time it was classed as a medium security institution but now is categorized as a maximum security facility because it does have maximum security facilities.

Q Are there transfers to Terre Haute on a frequent basis from other federal prisons?

A Yes.

Q How often?

A We have several prison buses that are transferring prisoners almost weekly. They are weekly almost.

Q From one maximum security prison to another?

A To various institutions, federal prison camps, from one coast to the other, yes.

THE COURT: Some of the men that come in there are destined to be sent out and they stay there for a while until a place opens up, is that right?

[189] A Yes, judge. We might accept them from one district and we contact the probation officer and later transfer the prisoner, yes, sir.

THE COURT: All right.

BY MR. CALIFANO:

Q Warden Alldredge, do you have a pretty good sense, or did you at Lewisburg after being there awhile, of who the trouble makers were in the prison, who that 5% you talked about at Terre Haute were today?

A I might not personally have that knowledge but my staff would be informed better than I.

Q And they would know those prisoners who are either trouble makers or likely to be trouble makers?

A We constantly try to identify that group, yes.

Q That 5%, they know them?

A For the most part, but not always.

MR. CALIFANO: That is all, Your Honor. Thank you.

# REDIRECT EXAMINATION

BY MR. KATZ:

Q Warden Alldredge, going back to the publication of the stories which were marked in evidence, after those stories appeared in print and prior to the work stoppage,

would you have admitted press representatives to the institutions?

A Yes, I would have.

[190] Q In accordance with the usual operations policy?

A Yes, sir.

THE COURT: I think he said he did is what the record shows.

BY MR. KATZ:

Q Now, we have had testimony I believe from you before on the subject of what you termed the "big wheel".

Now, the big wheel in your experience, does it necessarily follow a man becomes a big wheel within an institution because of the fact that he was notorious to the general public because of what he was convicted for?

A No, it does not.

Q It is not necessarily true that only people like Bobby Baker and General Turner are capable of becoming big wheels?

A You are correct in your assumption.

Q Do you have an opinion respecting whether or not press attention given to these persons who become big wheels in the institutions can have any effect on their role?

A I think any person who would receive a great deal of attention from the press in an institution would become an important figure in that institution.

Q Not necessarily because he was a famous national figure before that time?

A No.

MR. KATZ: Thank you.

[191] THE COURT: You are excused. You will make your plane.

THE WITNESS: Thank you, judge.

(The witness was excused.)

MR. KATZ: Your Honor, we are endeavoring to see if we can obtain other transportation arrangements for Mr. Wainwright. We would like to start him on the stand.

THE COURT: I will try to accommodate him as best I can. We will see how it goes.

Thereupon,

LOUIE L. WAINWRIGHT

was called as a witness, and being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KATZ:

Q Sir, would you please state your name and residence?

A Louie L. Wainwright, Tallahassee, Florida.

Q What is your occupation?

A I am Director of the Florida Division of Corrections.

Q How long have you been the Director of the Florida Bureau of Corrections?

A I have been in the correctional service for more than 20 years and I have served in the position of director for the past ten years.

Q Prior to your tenure as director what other positions in the correctional system did you hold?

[192] A Warden of institution for five years, and prior to that I was in the correctional service within the institution.

Q All this in the state of Florida?

A Yes, sir.

Q Are you a member of any professional associations dealing with corrections?

A American Correctional Association; National Association of State Correctional Administrators; American Wardens Association.

Q Would you very briefly describe the American Correctional Association?

A It is composed of about 12,000 members in the Correctional Service composing of 19 affiliated organizations such as American Wardens Association, Medical

Association, Correctional Psychologists Association, Correctional Officers Association, Correctional Chaplains Association, and other people related to correctional work.

Q Does the membership of this association include personnel who work for the Federal Bureau of Prisons?

A Yes, it does.

Q Have you ever held office in these associations?

A Yes, in 1966 and '67 I was president of the National Association of State Correctional Administrators and in 1970 and '71 I was president of the American Correctional Association.

Q Would you please describe for His Honor the penitentiary system which you run in Florida, how many institutions do you have?

[193] A We have 9 major institutions; fourteen 50-70 man institutions; and 11 work release centers. Total of 10,297 inmates and 2600 employees.

Q What is the typical range of offenses for which persons are convicted who reside at your institutions?

A All convicted felons, ranging from murder, armed robbery, rape, aggravated assault, on down to forgery.

Q What proportion of your prison population roughly would you consider a disciplinary problem?

A About 10%.

Q In what way are they problems for the administration?

A Of course most of this group is concentrated in two major institutions of the Florida State Prisons. There the more serious crimes, management problems, aggressive behavior, those convicted of murder, serious escape risks, homosexuals, behavior problems of all nature and of course as you know society has become a lot more tolerant and permissible and that carries over into the institution which causes problems for management.

Q How does that cause problems for management?

THE COURT: I would like to know what he is talking about first.

When he says society has become more permissible, what are you talking about? I would like to know what he means by that.



A I mean there are more people committing offenses and more tolerance to those offenses in society.

[194] THE COURT: You mean you don't get them in prison because people are tolerant of them?

A The confrontations occurring on the outside that didn't occur years ago, people come to us with backgrounds in taking part in demonstrations and marches and confrontations with police, etc., which makes it more difficult problems—

THE COURT: —I see, more activists sort of coming into the prison system?

A Yes, sir.

THE COURT: I understand.

BY MR. KATZ:

Q Has there been much of a change in the proportion of disciplinary problems in the system in recent years?

A Yes, there has been considerable change.

Q In which direction is the change?

A More problems, more difficult.

Q Why is this?

A Well, as you know in most states, in particular our state, there has been stepped up activity in the area of probation, in the area of parole and work release centers which skims off what was normally referred to as the better class of inmates leaving the most difficult management problems in the system.

Q Do you have a policy with respect to contact between the news media and inmates of your penal institutions?

[195] A Yes, sir. Our policy is we do not permit interviews with the press—between the press and inmates.

Q Does this policy apply uniformly in all of the institutions of your control?

A Yes, it does.

Q What are your general reasons for prohibiting inmate and news media interviews?

A Of course we haven't experienced contact with too many reporters as was described here by Dr. Fischer this morning and we feel that we want the press and the public to know what is going on in the institutions, we

want to open our institutions to public scrutiny as much as possible. We do that by permitting the press to tour any program or any phase of the operation in the institution; they may on those tours discuss any program aspects with the inmates involved and we feel that this is sufficient exposure to allow the public to know what we are doing and what we are not doing within the system.

Q Are you familiar with the policy of the Federal Bureau of Prisons in this regard which is at issue in this case?

A Yes, I am.

Q It is to the policy you described regarding your institutions substantially similar to the federal system?

A Very similar.

Q You heard the term "big wheel" or term similar to it [196] used in this courtroom today. Do you have on the basis of your experience an opinion respecting whether certain inmates tend to become big wheels?

A Certainly I think the big wheel or leader, or inmate leader as termed is certainly very evident in our prison operations.

Q Do you define the term big wheel as what, sir?

A It is an inmate who is able to gain status among the other inmates either from his publicity and type of crime before he came to the institution or his activity after he gets into the institution in which he gains the respect or at least the following of many of the other inmates within the institution.

Q Is this a common phenomenon?

A Yes, I think there is no question that any time you have people together there are going to be leaders among those people whether in prison or out of prison.

Q Do you have inmates in your system who are persons of considerable national notoriety? Notoriety within the state of Florida?

A Yes, we have some.

Q Tell us who they are?

A Dr. Copolino, Joe Fields, Murph the Surf.

Q Dr. Carl Copolino?

A Right.

THE COURT: You are not saying they are big wheels? They are prominent—are they leaders in your prison system? [197] Is that doctor a leader in your system?

A He has a great deal of following, yes, sir.

THE COURT: So you say he is one of the leaders?

A Yes. There are people in the power structure, judge, who have positive support and those who have negative support.

THE COURT: That isn't what I was asking about. I was asking is he one of the leaders?

A Yes.

BY MR. KATZ:

Q Mr. Wainright, did there come a time recently when one of your institutions was visited by Mr. Les Whitten (phonetic spelling)?

A Yes, sir.

Q What institution was that?

A Florida State Prison.

Q Who is Mr. Whitten?

A He is a reporter for the Jack Anderson column.

Q When was it Mr. Whitten visited Florida State Penitentiary?

A September 16, 17, 18 of 1970.

Q Did you authorize Mr. Whitten's visit?

A I had several discussions with my immediate boss, then secretary, Dr. Bachs in which I objected to the visit.

Q Dr. Bachs is who now?

A Dr. Bachs was at that time my immediate superior. He was secretary of the Department of Health and Rehabilitation.

[198] Q What did Mr. Whitten want to do in the Florida State Penitentiary?

A He wanted to tour the institution non-supervised, talk to any inmate or staff that he wanted with the assistance of an inmate as his tour guide.

Q An inmate?

A An ex-inmate.

Q Was this in accordance with your policy?

A Definitely not.

Q Was Mr. Whitten permitted eventually to have these interviews?

A Eventually, yes.

Q This was an exception to your policy?

A Yes.

Q Made by you?

A Made by Dr. Bachs.

Q How long did Mr. Whitten and his escort remain at Florida State Penitentiary?

THE COURT: Three days is what he said.

Let's go on with some new information about it.

BY MR. KATZ:

Q Did there later appear articles in newspapers based on these interviews?

A Yes, the articles started appearing on October 1st, 1970.

[199] THE COURT: Was that in the column or was it—

A —his columns, judge, published in about 25 papers in our state.

THE COURT: Yes, but it was in the column?

A Yes.

MR. KATZ: I would like to have these marked for Identification as Government's Exhibit 5, and there are 10 of these.

THE COURT: Why not make them A to J. Anderson's column?

MR. KATZ: Yes, sir. Your Honor, we would like to move to have xerox copies inserted in the record.

THE COURT: Certainly. I would like to read the original. And they will be received in evidence. I will read them.

MR. KATZ: I may explain this, Your Honor. We have two sets, one dated October 1st, one dated October 2nd. In each case the ten articles are identical, the only difference being they each appeared in different Florida newspapers.

THE COURT: Surely.

A Different headlines also.

THE COURT: Different headlines and different priorities to his column.

MR. KATZ: And different paragraphs.

THE COURT: That is because newspapers can cut something out if they want to.

[200] When will you know whether you have this gentleman on an airplane or not?

COUNSEL: Your Honor, at this point we can't get him on any plane except 8:35. I can make one more call if you feel we can't finish up.

THE COURT: Is that 8:35 in the morning?

COUNSEL: In the morning out of Baltimore.

THE COURT: You say he is on that?

COUNSEL: That is the reservation he has now.

THE COURT: That means we have to finish up tonight.

THE DEPUTY CLERK: Government Exhibit 5-A thru J received into evidence.

(Government Exhibit Nos. 5-A thru J marked for Identification and received in Evidence.)

MR. KATZ: I take it Your Honor admitted these into evidence?

THE COURT: Yes.

MR. KATZ: Has Your Honor received a copy of it?

THE COURT: No, I haven't. You fellows have been shuffling papers. You go on with your examination while I am reading them.

MR. KATZ: I now offer into evidence Government Exhibits 6-A thru J. This is October 2nd.

THE COURT: Received.

THE DEPUTY CLERK: Government Exhibits 6-A thru J marked for Identification and received in Evidence.

[201] (Government Exhibits No. 6-A thru J marked for Identification and received in Evidence.)

BY MR. KATZ:

Q Mr. Wainright, you have seen and read the two articles over the by-line of Jack Anderson which have just been admitted into evidence?

A Yes, sir.

**Q** Do the newspapers in which these various articles appear receive circulation in the Florida State Penitentiary?

**A** Several of them receive circulation in the institution and of course copies of others may be mailed in by inmate families.

**Q** You have an opinion overall respecting the truth or falsity of the allegations contained in the articles?

**THE COURT:** Oh, come, come!

**MR. KATZ:** Your Honor asked Warden Alldredge the same question with respect to—

**THE COURT:** —I know, but these were quite different articles in form, they deal with a series of specific problems in the prison system that were noted. The other was a broadside type of charge not by a newspaper reporter. These articles detail a group of very familiar difficulties in the prisons. They detail the type of difficulties that have been encountered in the prison system of Arkansas, the prison system of several southern states, in Maryland, in Virginia, and in the District of Columbia. There is nothing particularly unique about this [202] and I suppose then that what is important to this witness and to you is to throw some light on whether there are aspects of this that are true, aspects that are false or whether the whole thing is false, or the whole thing is true. But I think it needs a little more differentiation than your general question. These are common prison problems that resulted in the federal court shutting up the prison system in states because of the lack of adequate hospitals and prison facilities and those conditions have been revealed by the press.

Did you issue a reply to this, Mr. Wainright?

**A** Dr. Bachs did.

**THE COURT:** In what respect? That is is erroneous?

**A** Only on the first article.

**BY MR. KATZ:**

**Q** I show you a copy of the two articles, Mr. Wainright. Will you look at those. Would you tell us which of the assertions made are in your judgment true and which are false?

A Of course as the judge has said, some of the points in here such as overcrowding and lack of adequate hospital facilities are accurate, but the cases that he pointed out were not verified. They are completely inaccurate. The allegation that we attempted to check a corpse into the hospital was certainly a misrepresentation of fact. The total articles, the general theme of the articles are completely false.

[203] Q After the publication of these articles did there come to your attention that there was any reaction to them among the inmate population at that penitentiary?

A There immediately began to be reaction from the inmates within the system, within the institution.

Q What form did that reaction take?

A Of course as a result of this reporter being there and these two articles and thereafter state reporters begun touring the institution and writing their own stories.

Q By state reporters you mean what?

A Local newspaper reporters from within the state of Florida, and of course each one of them editorializing their own views and their own opinions as to what they saw, many of them disagreeing with particular points in this column, but also exaggerating other points. We had numerous newspaper reporters in during the next several weeks, conditions in the institution became very serious and we had additional disciplinary problems, we had more problems supervising the inmates, had more fights between inmates, had more medical complaints; we had two of our medical staff resign and leave the institution. We had a complete reversal of the trends that we had been going for the last several months since appointing a new dynamic superintendent a year and a half prior to this, and it finally resulted in—

Q —if I may interrupt you for just a second. Were these [204] local reporters permitted to have private interviews with the inmates?

A They were.

Q Is this too exception to the policy?

A Yes.

Q How long did this go on?



A Until the situation got to be complete chaos and Dr. Bachs decided maybe we ought to revert back to the policy we had through the years.

Q And for how long a period did this continue?

A Some three to four weeks.

Q You were describing the effect of the stories, etc., at the penitentiary. What happened after that?

A As I said, we continued to have problems. We were tremendously overcrowded, the repetition of the articles printed of course kept the inmates stirred up considerably more than they would have been otherwise. The numerous investigations involved as a result of the alleged investigation of course caused turmoil in the institution and the morale of the inmates was down, finally resulted in a serious disturbance at the institution.

Q When did that occur?

A February 14, 1971, a few months later.

Q Would you describe that disturbance to His Honor?

A At this institution we have two complete separate [205] institutions. One is a 1200 man maximum security institution and the other at that time had 2400 inmates in it with just a little less than maximum security. There was a work stoppage in the maximum institution here the day we were attempting to work the problems out there. The other institution the inmates walked off their jobs and refused to go to their cells. They were finally allowed to go to the recreation yard. We attempted to talk with them there which was unsuccessful and later resulted in late evening confrontations and the use of gunfire to bring them under control and put them back in their cells.

(Change of Reporters)

[206] BY MR. KATZ:

Q How many people were injured as a result of this?

A I believe there were about forty-two.

Q Was there property damage?

A About \$10,000 property damage.

THE COURT: Has the Legislature done anything about it?

**THE WITNESS:** Since that time?

**THE COURT:** Yes. I mean, Anderson says it isn't your staff's fault. It is the fact that the taxpayers aren't putting up enough money for a decent prison system.

I was just wondering whether there was any reaction from the state authorities.

**THE WITNESS:** They have taken some steps.

**THE COURT:** Gotten more money?

**THE WITNESS:** Yes, sir.

**BY MR. KATZ:**

**Q** Mr. Wainwright—

**THE COURT:** That has been the theme of the testimony right along.

**BY MR. KATZ:**

**Q** Mr. Wainwright, do you have an opinion, based on your position as Director of Corrections, and based on your experience, and based on knowledge you have of the events which you have described, as to whether or not there was a causal connection [207] between the interviews which took place and were recorded in the Jack Anderson columns, which have been introduced in evidence in this case, and the other interviews which occurred on the one hand, and the major disturbance which you have just described?

**A** Well, as I mentioned earlier, we had a little over a year prior to that appointed a new dynamic superintendent to head, to manage that institution, and to overcome some of the problems that we recognized we had there.

It was on the way to working out some of those problems. We had received legislative recognition, some legislative committees had been there. In fact, the day the disturbance occurred, we were meeting with the Senate Legislative Committee to discuss many of the problems existing at that institution.

So as a result of the Anderson column and the subsequent publicity and reporters and repetition of reports, at that point the situation began to turn the other way, began to deteriorate.

We had serious problems, as I said, and disturbance. We had more disciplinary reports; we had more reaction by the inmates; we had more confrontation with the officers; and it did not cease until the final disturbance on February 14.

So I think the only logical explanation that can be drawn is that it resulted as an effect of the publicity that began with Jack Anderson's column, and followed through with [208] the other reports.

Q How significant was the February disturbance?

A It was extremely significant. There were several hundred people involved. Of course, it resulted in many investigations, both state and Federal; and the institution, of course, was in considerable chaos for many weeks thereafter, under very close security and under tight management operation.

Q Are you familiar with the proposed guidelines of the Association of State Correctional Administrators with respect to inmate interviews?

A Yes, I am.

Q And what do you understand that policy to be?

A That each case should be handled on an individual basis.

Q Do you concur with that?

A No, I don't.

Q Would you state your reasons for not concurring?

A I think that we have to develop uniform policy in the institution, in the Division, and when you start making exceptions to a policy such as that, that there is not any place to stop.

I think somewhere along the line the press has to understand that there are management problems in the institution that they can't solve. They are not instant experts. And that interfering beyond the point of being able to review programs, [209] to be able to discuss problems of programs, or lack of programs, to physically see it, themselves, and also to be able to talk to inmates involved in those programs, seems to me like that is sufficient. They don't have the authority to do anything beyond that. They can't legislate. They can't take a man to court. They can't prefer charges against people who

are not acting properly. It seems to me like that is the responsibility of the courts.

Q Are you familiar with the structure of the Federal prisons and the institutions? Are you familiar with the institutions which make up the Federal Bureau of Prisons?

A Yes, I am.

Q On what basis do you have that familiarity?

A Well, of course, I have talked with wardens from the institutions on many occasions at different meetings I have attended. We mentioned earlier I actually spent two weeks at the institution in Atlanta; and I have visited two or three other of the Federal institutions; and I am quite familiar with the one in Tallahassee.

Q So you feel, based on your knowledge of the Federal prison system, and based on your experience and expertise and knowledge of corrections, that a discretionary policy, such as that of the Association of State Correctional Administrators, is not appropriate in such a system?

A I think it would be quite inappropriate for the [210] Federal system.

Q Why do you say that?

A Because of the vast number of institutions and, again, I think it needs to be a uniform policy that can be followed throughout.

MR. KATZ: Your witness.

## CROSS EXAMINATION

BY MR. CALIFANO:

Q Director Wainwright, near the end of your testimony you said that you disagreed with the Association recommendation that press interviews should be handled on an individual basis, is that correct?

A That is correct.

Q Do you recall writing me a letter on October 3, 1972, in response to a letter related to this case?

A No, I don't.

MR. CALIFANO: I only have one copy.

THE COURT: Plaintiffs' 11, is that it? You can mark it.

THE CLERK: Plaintiffs' Exhibit No. 11 marked for identification.

(Whereupon letter dated 10/3/72 from Mr. Wainwright to Mr. Califano was marked Plaintiffs' Exhibit No. 11, for identification.)

MR. KATZ: May we have a copy of that, Mr. Califano?

MR. CALIFANO: I don't have any more.

[211] MR. KATZ: May I read it first?

MR. CALIFANO: Yes.

BY MR. CALIFANO:

Q Director Wainwright, I will read the first paragraph of that letter:

"Dear Mr. Califano:

"It is against our policy to allow press interviews with individual inmates except under unusual situations. If such visits were routinely approved, the administrative and custodial burdens would over extend our already limited staff. At present each request is individually processed by the institutional superintendent and final approval is granted from the central office based upon staff capabilities and the nature of the request."

And this letter is dated October 3, 1972.

Now, could you explain the difference between—

THE COURT: You had better ask him whether he wrote that letter.

Did you write that letter?

THE WITNESS: It looks like my signature.

THE COURT: I assumed from the testimony that somebody else came along and wrote that letter and signed your name to it. Is that right? Is that what happened? That is [212] what happens to all busy officials.

BY MR. CALIFANO:

Q Is that your signature, Director Wainwright?

A It is my signature.

Q I will give you the original, if you like.

A Yes.

THE COURT: Did you sign it or did somebody sign your name?

THE WITNESS: I am not sure, Judge.

THE COURT: All right.

THE WITNESS: I might comment, if I may.

At the time back in October, we were reviewing these policies with the superintendents. We have not adopted the State Association of Prison Administrators policy, the policy guidelines in any of the seven or eight areas.

At the time this letter was written, it was during the time that those policies were under review; and it is very probable that the staff felt at that time we were going to adopt the policies. But we have since met with the Attorney General, and others, and have not adopted the policies of the Association.

BY MR. CALIFANO:

Q It doesn't say you were going to adopt that policy, Director Wainwright. It says, it is your policy.

A Well, I can give you one exception that we have made, [213] for instance. We had a lady come to us that was fifty years old and was illiterate. We enrolled her in school; she graduated from high school, got a GED diploma, bought herself a graduation ring. I happened to mention it to a reporter one day and he wanted to interview her. I granted that interview.

I guess I did that on an individual basis. But generally speaking, we do not permit interviews with individual inmates.

Q Do your superintendents have authority to grant interviews?

A No, sir.

Q May I just get the signature point cleared up. You said that looks a lot like your signature.

A I will accept responsibility for the signature.

Q You mentioned that there was an investigation and some kind of a report from an investigation after the

stories were written, and you had disturbances in the Florida prison. You called it an alleged investigation.

A Yes, sir.

Q What investigation was that?

A The Department of Law Enforcement checked on a couple of the items. Dr. Bax, personally, checked on some of them.

Q Did they investigate the prison system or just investigate whether each item in these stories was correct or incorrect?

[214] A They reviewed the allegations in the stories.

Q Are any of the prisons under your jurisdiction and control overcrowded?

A All of them are.

Q All of them are.

Are some of the under-staffed, as well, as far as guards are concerned?

A Yes, sir.

Q Are they under-staffed as far as medical treatment is concerned, doctors?

A Yes, sir.

Q Are they under-staffed as far as training programs are concerned, educational programs?

A Yes.

Q Do you have racial problems in the prisons under your control, racial tensions?

A We have racial tensions, yes.

Q What is the racial mix of those prisons, do you know, roughly?

A About fifty-two per cent black.

Q Have you had incidents in those prisons, stabbings, homosexual incidents, prior to the time the stories were written?

A We have had some instances since the prisons have been operating, yes, sir; but we had a stepped-up number of [215] them after the stories.

Q Do you think that these factors might have contributed to inmate dissatisfaction?

A Certainly they contribute to inmate dissatisfaction.

Q Do you think, Director Wainwright, that the prison officials like you, short on guards, short on medical treat-



ment, short on educational and training programs, overcrowded, racial tensions, are just sitting on bombs in our society, sitting in very tough situations?

A No question about it, yes.

Q And they could explode at any time?

A (Witness nods assent.)

Q Whether or not the press writes a newspaper story?

A But they will explode a lot quicker if they are agitated by the press.

Q If they are agitated by the press. Does the press agitation, as you describe it, come when the reporter goes to the prison or—I think you said it was the publication of the Anderson column that precipitated the problem.

Did you have a problem before the column was printed?

A Well—

Q Of disturbances?

A Are you asking me if Mr. Whitten had gone to the institution and left without publishing a paper that there would have been a problem?

[216] Q Right.

A I am assuming it would be much less of a problem if that had occurred.

Q Well, did you have disturbances between the time Mr. Whitten visited the prison and the time prior to the publication of the Anderson column?

A We had considerable apprehension and considerable reaction.

Q From the prisoners?

A Right, and from the staff.

Q The staff was apprehensive?

A Both.

Q I don't want to spend a lot of time, but you made a kind of general assertion that these articles are false, and there are a whole host of different kinds of facts in these articles, many relating to matters that have to do with hospitals outside the jurisdiction of your Bureau of Prisons and records that Mr. Whitten found there.

Are you saying that every fact stated in these articles is false?

THE COURT: No, he isn't saying that. He has said that—

BY MR. CALIFANO:

Q What precise facts are false, Director?

Would you like to look at the article?

[217] A Well—

THE COURT: I don't want to try the newspaper articles. As I understand what this gentleman is saying, it is that some of the general conditions referred to in there are in various degrees true but that some of the specific complaints and incidents by individuals in there are false.

Isn't that what you are saying?

THE WITNESS: Yes.

THE COURT: He has been very frank in saying that this like many prisons has got problems but that he feels that some of these individuals who talked to Whitten, if they did, exaggerated and gave a false indication of what their problem was.

THE WITNESS: Yes, sir.

THE COURT: I gather that is what he is saying.

It doesn't really bring us forward to try out whether somebody really had a more serious or less serious leg wound or something else. That won't get us anywhere because there isn't any notion in this case that what newspapers write is true, Mr. Califano. I haven't approached it from the point that what newspaper writers are going to say is necessarily true.

BY MR. CALIFANO:

Q Director Wainwright, you said for three to four weeks you had an open press policy.

[218] A Yes, sir.

THE COURT: He had one imposed on him by his boss.

BY MR. CALIFANO:

Q You had one imposed on you by your boss.

A That is correct.

THE COURT: Then his boss took it back.

BY MR. CALIFANO:

Q Did you have individual, private, confidential interviews during that three or four weeks with reporters?

A They were allowed to interview prisoners in the presence of staff and in some cases, of course, without the presence of staff.

Q Do you have a sense of the number of interviews that took place in that period of four weeks?

A I would say some eighteen, twenty.

Q And that was a period of turmoil as a result of the Anderson article?

A What?

Q You said there was turmoil in the prison as a result of the Anderson article.

A I am saying it started with the Anderson article and it kept going with each week that another reporter would come in or a half dozen reporters would come in. The apprehension and turmoil continued to build, tensions began to build, and so forth, yes.

[219] Q The Anderson article appeared on October 1, as I have it, at least, and October 2.

A Yes.

Q I thought you said sometime in February—what was the date of the disturbance?

A February 14.

Q February 14. When did you open it up to the press, after January 1 or on October 3? You said it was a three-to-four-week period.

A Right after the October 1st and 2nd articles came out.

Q After three or four weeks, you closed it down; your boss changed his mind and you closed it down?

A That is right.

Q From November 1st on, you finally, in your quite candid terms, got straightened out and you closed the press out?

A From individual interviews.

Q From individual interviews.

A Yes.

THE COURT: And then there were riots.

THE WITNESS: Yes, sir.

BY MR. CALIFANO:

Q Two and a half months later. Yes?

A Yes. It takes a while for those things to build.

THE COURT: Now, Mr. Califano, it is five o'clock. Apart from the Court's own stamina, I have to take into account [220] that the personnel have been working on daily copy.

I don't want to inconvenience this gentleman unless I have to.

THE WITNESS: I appreciate that, Your Honor.

THE COURT: On the other hand, we have been sitting continuously since nine-thirty this morning. It is now five.

Perhaps you ought to take a moment and go over your notes and see how much more you want to do with Mr. Wainwright.

MR. CALIFANO: I think that is enough.

THE COURT: I appreciate your tolerance with the Court's position but I really think we have to shut down about now.

I have sat later in murder and other particular cases, but I think today we have been running pretty hard.

MR. CALIFANO: Thank you.

THE COURT: Mr. Wainwright has been a very candid and direct witness on these matters and helped us move along.

Mr. Katz, do you have anything further that you wish from him?

MR. KATZ: I have one further question which I don't believe I covered previously.

THE COURT: Very well.

### REDIRECT EXAMINATION

BY MR. KATZ:

Q Mr. Wainwright, do you believe, based on your expertise [221] and experience, that press coverage, press attention to inmates tends to either make them Big Wheels or having been Big Wheels tends to further their activities along this line?

A I think individual interviews tend to give them more status and make them, put them in the category of a Big Wheel, yes.

MR. KATZ: Thank you, sir.

### RE CROSS EXAMINATION

BY MR. CALIFANO:

Q Director, I am sorry. I didn't realize the Government was going to do that to me.

How many inmates within your jurisdiction and control became Big Wheels as a result of press interviews during that three-to-four-week period, and would you identify them, please, if you can? That were not Big Wheels before.

A Well, I think that I can name Cleo Orange, for instance. That is the only one I can name right off that emerged as a result of the interviews. But my point is—

Q How many times was he interviewed?

A I don't have any idea. I wasn't there.

Q You weren't there?

A No.

Q You mean you kept no record of how often people were interviewed?

A I assume the superintendent of the institution did but [222] I am not at the institution.

Q But that is the only example that you can recall at this time?

A That is the only example I can recall.

Q O.K., thank you.

THE COURT: All right, gentlemen, we are closed.

MR. CALIFANO: Your Honor, I forgot to offer the letter in evidence.

THE COURT: Yes.

(Whereupon Plaintiffs' Exhibit No. 11 was received in evidence.)

THE COURT: We have plenty time for housekeeping. We will start up at nine-thirty tomorrow morning. How many more witnesses do you have, Mr. Katz?

MR. KATZ: Your Honor, we have just one more, I believe.

THE COURT: Is he going to be on the statistical aspects of this case?

MR. KATZ: We had planned to offer that by way of documentary evidence.

THE COURT: That may be satisfactory. I have no problem with that form.

MR. KATZ: This is going to be a gentleman from Iowa.

THE COURT: And then you will have how many more?

MR. CALIFANO: Director Carlson.

THE COURT: What order would you want to go in?

[223] MR. CALIFANO: And some documentary evidence.

THE COURT: What order would the parties like to go in? I take it you want to take the man from out of town first?

MR. CALIFANO: That is what we thought, since he was subpoenaed.

THE COURT: We will take him tomorrow at nine-thirty. I have two brief arraignments. They won't take any time. I will not be more than five minutes late.

MR. CALIFANO: Then we have a lot of documentary evidence.

THE COURT: That we can do after these gentlemen get home to families and homes for Thanksgiving. Those of us who live here can fiddle around with documents.

So we will take the man from Iowa at nine-thirty tomorrow morning and follow that with Mr. Carlson.

MR. KATZ: Fine.

(Whereupon at 5:05 p.m., the trial was recessed, pursuant to reconvening at 9:30 a.m., November 22, 1972.)

[223-A]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

WASHINGTON POST, ET AL., PLAINTIFFS

v.

RICHARD KLEINDIENST, ET AL., DEFENDANTS

STIPULATION

Plaintiffs and defendants, by their undersigned counsel, hereby stipulate that the following corrections be made in the trial transcript for November 21, 1972:

p. 2, line 21	for "Floyd" read "Louie"
p. 79, line 6	for "There" read "They"
p. 79, line 10	for "can" read "can't"
p. 80, line 2	for "was a" read "was not a"
p. 90, lines 23, 24	for "cantino" read "canteen"
p. 99, line 2	for "giving" read "given"
p. 99, line 9	for "furlow" read "furlough"
p. 102, line 13	for "DiSilva" read "DiSalvo"
p. 123, line 21	for "pinned" read "peaned"
p. 139, line 11	for "responsible" read "irresponsible"
p. 191, lines 10, 16	for "Floyd" read "Louie"
p. 196, line 22	for "Paul" read "Carl"
p. 197, line 11	for "Rugs" read "Leg"
p. 288, line 2	delete "no"
p. 288, line 13	for "to" read "too"
p. 293, line 19	delete "no"



An additional copy of this Stipulation is attached for insertion after the cover page of the trial transcript.

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**RICHARD M. COOPER**  
**Attorney for Plaintiff**

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**[Illegible]**  
**Assistant United States**  
**Attorney**  
**Attorney for Defendants**

**November 29, 1972**

[224]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**Civil Action No. 467-72**

**THE WASHINGTON POST COMPANY**

**and**

**BEN H. BAGDIKIAN, PLAINTIFFS**

**v.**

**RICHARD G. KLEINDIENST, Attorney General of the  
United States**

**and**

**NORMAN A. CARLSON, Director,  
United States Bureau of Prisons, DEFENDANTS**

**Washington, D. C.  
November 22, 1972**

**The above-entitled cause came on for further hearing  
before the HONORABLE GERHARD A. GESELL,  
United States District Judge, at 9:50 a.m.**

**APPEARANCES:**

**(As heretofore noted.)**

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## EXHIBITS

*Government's:*

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No. 7 Policy and Procedure Guidelines, Bureau of Adult Correction Services, State of Iowa.	230	241
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No. 8 Burlington Hawk-Eye article.	234	241
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No. 11 Pamphlet entitled United States Department of Justice, Federal Bureau of Prisons, Biennial Report for 1970-71.		244
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No. 12 Chart entitled Statistical Data Regarding the Number of Federal Prisoners in Bureau of Prison' Institutions in the Following Categories as of October 23, 1972.		244
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No. 12 Director's letter of January 13, 1972 and attached Policy Statement.	245	
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## PROCEEDINGS

THE COURT: All right, we will take the next witness.

MR. CALIFANO: Your Honor, just to clean up the admission of Plaintiffs' Exhibit 11, the letter from Director Wainwright to me.

THE COURT: That may be received at this time.

That is already in evidence at Page 222 of the transcript. I thought I had admitted it.

MR. KATZ: The Government calls Mr. Brewer.

WHEREUPON—

## LOU V. BREWER

was called as a witness by the Defendants, and having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. KATZ:

Q Sir, would you state your full name and present address, please?

A Lou V. Brewer; I reside on the grounds of the Iowa State Penitentiary in Fort Madison, Iowa.

Q What is your occupation?

A Warden of the Iowa State Penitentiary.

Q How long have you been Warden of the Iowa State Penitentiary?

A Four years.

Q Would you describe to the Court very briefly your [227] previous experience in the correctional field prior to assuming that position?

A I began working corrections in 1956, as a classification interviewer at the Tennessee State Penitentiary, and remained with that system until 1961. The last year that I was there, I was Director of Classification. In 1961, I became a counselor at the Iowa State Penitentiary in Fort Madison for two years. Two years later, I became the Superintendent of a forestry honor camp in con-

junction with the Iowa Men's Reformatory; and two years later became Superintendent of the Release Center in Newton, Iowa; until I assumed the present position.

Q Would you describe very briefly the nature of the Iowa State Penitentiary, of which you are the Warden?

A The Iowa State Penitentiary houses maximum security needs of the system. We have approximately 600 inmates, the full range of major offenses, dealing primarily with recidivistic and long-term individuals.

Q Do you have many individuals incarcerated in that institution whom you consider to be disciplinary problems?

A Yes. Because of the structure of our system and the fact that we transfer behavioral problems and security risks from other institutions, approximately 20 to 25 per cent of our present population are behavioral, management problems.

Q What types of problems do they present?

A Assaultive behavior, acting out in an impulsive and [228] rebellious manner.

Q Do you have inmates who are considered to have exercised a leadership role over other inmates?

A Yes, we have inmates who within the prison community become leaders because of their more activist nature and their ability to manipulate other people to follow their will.

Q Could you give us an idea how many such individuals you have?

A Well, within that 20 to 25 per cent that I said were problem behavior, management cases, probably one-fourth of that number are of the leadership type.

Q All right. Now, Mr. Brewer, did anything unusual occur at the Iowa State Penitentiary in November of 1971?

A Following several days of unrest and continuing rumors and feed-back from staff, we did order a general lock-up on November 29, 1971, feeling certain that the information on which we acted was such that had we not done so, there was likely to occur a disturbance the next day.

Q What is a general lock-up?

A We left all men in the institution in their cells the next morning and began shifting further information to try to determine the nature, the cause, the grievances that were motivating the tension, and as much as possible, who was responsible. Within two days, we had been able to identify those people primarily responsible and identified the grievances. [229] We set about trying to redress those grievances that appeared to have merit; and two days later started returning the majority of the general population to routine, although we continued some people in the lock-up past that date.

Q Did this matter eventually come to the attention of the press in Iowa?

A Yes, it did.

Q Did you receive any requests from members of the press in Iowa to conduct interviews with any of these persons?

A Yes, a reporter for the Des Moines Register and one for the Burlington Hawk-Eye, each advanced a request to interview those inmates who were in segregated status as a result of the preventive action.

Q Were these requests made to you, sir?

A Initially, they were made to me.

Q Do you, in the State of Iowa, have a policy respecting inmate interviews with the media?

A Yes, we do.

MR. KATZ: I would like to mark this document as Government's Exhibit 7, for identification.

THE DEPUTY CLERK: Government's Exhibit No. 7 marked for identification.

[230 (Whereupon, the Policy and Procedure Guidelines, Bureau of Adult Correction Services, State of Iowa, was marked Government's Exhibit No. 7, for identification.)

BY MR. KATZ:

Q Now, Mr. Brewer, I now show you a document which has been marked as Defendants' Exhibit No. 7, for identification, and I ask you if you recognize it?

A Yes, I do.

Q What is that document?



A The Policy and Procedure Guidelines of the Bureau of Adult Correction Services, State of Iowa.

Q Would you briefly summarize for His Honor what the provisions of that policy are with respect to interviews between news media and inmates?

A It encourages press access to the institution and making available of information to the press. It further indicates that interviews in general should be granted and rests the prerogative for granting the interviews with the institution warden or superintendent, but indicates the institution superintendent may decline the interview in consideration of the needs of the inmate, other inmates, or the interests of the institution or the Bureau.

Q All right.

[231] Now, sir, directing your attention again to the requests for interviews following the lock-up, which you previously described, who made these requests to you?

A Well, initially a reporter for the Des Moines Register and, additionally, a reporter for the Burlington Hawk-Eye.

Do you wish their names?

Q Yes.

A The initial request was from James Landsburg, from the Des Moines Register, and Les Peck, from the Burlington Hawk-Eye.

Q Approximately when did you receive these requests?

A Mid to late December.

Q What action did you take on those requests?

A I denied the interviews.

Q On what grounds?

A I felt the institution was still in a state of tension, and that interviewing the inmates could only add stature to those people whom we had in segregated status, as far as their relationship to the other inmate population, and that this could give rise to the heightening of tension and the feelings of the inmates and staff.

Q What happened after you issued your denial, as you stated?

A I was subsequently ordered by the Director of the Bureau of Adult Correction Services, he having advised

me that [232] he had been directed by the Governor's office that we should permit the interviews.

Q And did interviews in fact take place?

A Yes, they did.

Q When did they take place?

A Some time in the first week of January of '72.

Q Who conducted the interviews?

A Mr. Gordon Gamet at that time substituted for Mr. Lansburg, who made the original request for the Des Moines Register; and Mr. Peck, the same reporter who made the request for the Burlington Hawk-Eye, conducted the interviews.

Q Where did they take place?

A We arranged an interview room inside the institution for this purpose.

Q How many inmates were interviewed?

A Six.

Q How were these six inmates selected?

A I initially provided them with a list of those inmates who were in segregated status relative to the November 29 action, and from this list, they scanned our card file and indicated an initial six that they would interview.

After they began the interviews, they detoured from this list, and after interviewing the first inmate, gave us a list different from this of named inmates. Since it was still within the framework of interviewing inmates that we had in [233] segregated status related to this issue, we permitted them to interview those six.

Q And how long did this entire process of interviewing these six individuals go on?

A They were involved with either interviewing the inmates or touring the institution from early afternoon, I think around 1:30 or 2:00, until 8:00 or 9:00 in the evening.

Q The inmates interviewed were at the time in what status?

A They were in administrative segregation.

Q And why were they in administrative segregation?

THE COURT: He has explained they were part of the group that were locked up as a result of the effort

through the general lock-up to determine who the leaders were and hold them. Isn't that what happened?

THE WITNESS: That is correct.

THE COURT: He has been all over that.

MR. KATZ: All right.

BY MR. KATZ:

Q Did there subsequently come a time when stories appeared in newspapers which were based on these interviews?

A Around January 9, I believe, each of the newspapers involved did publish an article reflecting these interviews.

THE COURT: Did they also interview you, Warden?

THE WITNESS: Each of these people had previously [234] interviewed me and subsequently interviewed me.

THE COURT: Yes.

MR. KATZ: I would like this marked as Government's Exhibit 8.

THE DEPUTY CLERK: Defendant Government Exhibit No. 8, marked for identification.

(Whereupon, the Burlington Hawk-Eye article was marked Government's Exhibit No. 8, for identification.)

MR. KATZ: And Government's Exhibit 9, for identification.

THE DEPUTY CLERK: Defendant Government Exhibit No. 9, marked for identification.

(Whereupon, the Des Moines Register article was marked Government's Exhibit No. 9, for identification.)

BY MR. KATZ:

Q Mr. Brewer, I am going to show you two newspaper stories which have been marked as Defendants' Exhibits 8 and 9, for identification, and I would like you to examine them and tell us if you recognize them?

A One of these is the article that appeared in the Des Moines Register, to which I alluded earlier; and the

other [235] one is the one that appeared in the Burlington Hawk-Eye on January 9, '72.

Q Those are true copies of the stories to which you referred?

A Yes, they are.

Q Were the newspapers which carried these stories circulated in the Iowa State Penitentiary?

A Yes, they were.

Q Were they read by the inmates?

A Yes, they were.

Q And were there any consequences that flowed from the circulation of these stories in the Iowa State Penitentiary?

A There were primarily two problems that developed.

Q Please tell His Honor about them.

A The inmates who were involved in the interviews, who contradicted our reason for having taken the action, seemed to gain stature with their peers; and much conversation then ensued around the institution, it was a heightening of tension among both inmates and staff, and the schedule on which we thought we could return the institution to normal was prolonged; and because of the state of tension that appeared to be there, we did continue with additional security manpower for another month longer.

The second ramification was that one of the inmates interviewed, though the reporters had agreed with me and said they would indicate to the inmates that their names wouldn't be [236] used, there was sufficient identifying information in terms of age and offense and length of sentence that one inmate who related the condition in approximately the same manner that we had related it, when we took the action, was identified to the general population. He subsequently advised the staff that he had been threatened as a result of this, and felt uncomfortable in returning to the general population, when we offered him an opportunity to do so. We thereby continued him in segregated or locked status for another month and a half longer, because of the fears that he had for his well-being, and numerous contacts from his mother, who was extremely fearful because of the same situation.

**THE COURT:** Mr. Katz, what has this got to do with the case before me? Will you explain what your theory is?

This gentleman has described what happened when a Governor intervened over the judgment of the penitentiary officials, forcing the breaking of a reasonable rule.

Now, what has that got to do with this case?

**MR. KATZ:** Your Honor, Mr. Brewer has testified as a result of and following from an interview which was conducted under the circumstances which Plaintiffs contend they should be conducted in the Federal Bureau of Prisons—

**THE COURT:** I am not interested in what Plaintiffs contend. You know what my opinion says. My opinion would no more require this kind of an interview. My opinion wouldn't [237] require this kind of an interview. I don't, therefore, see what the problem is.

I thought I made absolutely clear in my decision that discretion was going to remain in the wardens to determine some of these matters on an individual basis. Here the warden says, in his judgment, it shouldn't have happened; he got overruled on political or other reasons in Iowa; and he got into some trouble.

There isn't even any indication that these men had sought an interview or in advance had agreed to be interviewed. I have trouble focusing on its relation to the case before me. It is an interesting story and I am glad to have the benefit of it in the record.

**MR. KATZ:** Your Honor, he has testified that the interviewees did achieve enhanced status as a result of the interviews and the published stories as inmate leaders. That is the point we are trying to make.

**THE COURT:** In that sense, I understand that.

**MR. KATZ:** This is basically what we are trying to show with his testimony.

**THE COURT:** I just wanted to be sure that the United States understood what the issue was before me. It has been clouded throughout this proceeding because of the unwillingness of the United States to sit down, as I ordered, and work out a reasonable form of order with the Plaintiffs. It was adamantly [238] refused, al-

though I ordered it. I think, to some extent from the hearings and the kind of testimony you have presented to me, thinking it over last night and thinking about it this morning with this witness, that there has been some failure on the part of the Court's decision to communicate to the United States what I think is involved in the case.

You go ahead. I just wanted to be sure I understood what your position was.

May I ask you to wait a moment? I want to see counsel at the bench here in another matter briefly.

(Whereupon, the proceedings were temporarily suspended.)

THE COURT: Excuse me, Mr. Katz. I am sorry about the interruption. With a holiday coming up, there are always some unexpected matters.

Warden, there is one aspect of this that perhaps I didn't fully understand. Did these men, in each instance, the men that were interviewed, the six men, I believe you said—

THE WITNESS: Right, sir.

THE COURT: —that were interviewed, did they have a choice in the matter?

THE WITNESS: The reporters were asked to solicit the inmates' permission; and our policy also contains a form for this purpose and to provide us with a copy of the form.

THE COURT: So in each instance, they had agreed to being interviewed?

[239] THE WITNESS: After they were called to the interview room, they did agree.

THE COURT: But not in advance?

THE WITNESS: Not in advance.

THE COURT: Were members of the prison administration present at the interviews?

THE WITNESS: We had an officer outside the interview room but we had no one present within the room.

THE COURT: You had no overhearing?

THE WITNESS: No monitoring.

THE COURT: All right, thank you.

BY MR. KATZ:

Q I would like to ask you what other experience you have had under the operation of your policy statement. How many requests have you had for interviews within the last year?

A In the last year, there were approximately a dozen requests.

Q And did you deny any of them?

A I think there were four requests that were denied, this one and three more.

Q Why were the others denied?

A Well, one was denied because it appeared that the reason for the interview was to picture the inmate desired to be interviewed as a hero, as far as the establishment and staff were concerned, because he had given assistance to an officer [240] in a serious situation. It was my feeling that that would create adverse pressure on him within the inmate group; and I denied it.

The other one was a manpower denial, based on the number of people that were desired to be interviewed. I don't recall the other one. I think my assistant denied it.

Q Do you have any opinion, based on your experience, as to whether or not the press attention given to inmates tends to promote any leadership characteristics?

A I think the manipulative individuals who tend to be more verbal about problems within and contrary to the best interests of the institution are seemingly the ones more likely to gain this attention; and when they gain it, they do enhance their stature within the peer group within the community.

Q Do you perceive any difference in this phenomenon when on the one hand the contact with the press is achieved by correspondence and on the other hand if the press comes to the prison and conducts an interview with the individual?

A The correspondence contact is a more generally available avenue to all inmates, whereas it appears to me that the interviews tend to focus on this certain group of inmates.



**THE COURT:** So that if a newspaper got a letter from one of these leaders, or Big Wheels, or whatever you call them, and it was published in full text on the front page of the local paper, and it came back into the prison, that wouldn't have any [241] real effect on the man's stature? It wouldn't influence it at all? It would be only if he had talked to the man?

**THE WITNESS:** We have had that thing to happen and it didn't seem to have any great effect on the general climate of the institution, as did the interview situation.

**THE COURT:** Is it your testimony that every time there is an interview, it has this effect or only sometimes?

**THE WITNESS:** I would have to say that sometimes.

**THE COURT:** So it must depend in part on the man?

**THE WITNESS:** It would depend—

**THE COURT:** On the inmate.

**THE WITNESS:** It would depend in part on the man, the climate in the institution, the situation at the time.

**BY MR. KATZ:**

**Q** When the press comes into the penitentiary to conduct an interview, is the fact that this interview is being conducted readily known to the institution at large?

**A** It becomes almost immediately known.

**MR. KATZ:** Will you indulge me a moment, Your Honor.

At this time, I move Government's Exhibits 7, 8 and 9, for identification, into evidence as Government's Exhibits 7, 8 and 9.

**THE COURT:** They may be received without objection.

(Whereupon, Government's Exhibits Nos. 7, 8 and 9 were received in evidence.)

[242] MR. KATZ: Your witness.

CROSS-EXAMINATION

BY MR. CALIFANO:

Q Is the policy still in effect?

A Yes, it is.

Q Did any of the interviews you granted occur after this incident? Have you granted any interviews since November 1971?

A Yes, there have been interviews granted since that time of a human interest nature.

MR. CALIFANO: I have no further questions.

THE COURT: Thank you very much, Warden. You are going to be able to get back all right for the turkey.

THE WITNESS: I think so.

THE COURT: Good.

(Witness excused.)

THE COURT: Now, you have, then, a witness, Mr. Califano?

First of all, Mr. Katz, do you have any other witnesses?

MR. KATZ: Your Honor, we have no further witnesses.

THE COURT: All right, fine. We are a little confused as to the order of proof because I agreed and Mr. Califano agreed that you could put on your case, your material, in the middle of the Plaintiffs' case. Perhaps if there are documents, [243] we can take care of those later. It might be advantageous to dispose of the testimony first and then we can deal with the housekeeping matters.

MR. KATZ: Your Honor, at this time I have three documents which I would like to offer into evidence, copies of which have been furnished to the Plaintiffs.

THE COURT: Defendants' 10, 11 and 12.

MR. KATZ: Government's Exhibit 10, is a volume entitled Federal Bureau of Prisons Statistical Report, Fiscal Years 1969 and '70.

THE DEPUTY CLERK: Defendant Government's Exhibit 10—

THE COURT: Mark it in evidence.

THE DEPUTY CLERK: —in evidence.

(Whereupon, the volume entitled Federal Bureau of Prisons Statistical Report, Fiscal Years 1969 and '70, was marked Government's Exhibit No. 10 and received in evidence.)

MR. KATZ: Government's Exhibit 11 is a pamphlet entitled, United States Department of Justice, Federal Bureau of Prisons, Biennial Report for 1970-71.

THE COURT: In evidence.

THE DEPUTY CLERK: Marked as Defendant Government's No. 11 in evidence.

[244] (Whereupon, the pamphlet entitled United States Department of Justice, Federal Bureau of Prisons, Biennial Report for 1970-71, was marked Government's Exhibit No. 11 and received in evidence.)

MR. KATZ: Defendants' Exhibit 12, a chart entitled, Statistical Data Regarding the Number of Federal Prisoners in Bureau of Prison Institutions in the Following Categories, as of October 23, 1972.

THE COURT: Is that agreeable to you? I haven't seen that one.

MR. CALIFANO: Yes, Your Honor.

THE COURT: In evidence. I would like to see that, Mr. Clerk, after you record it.

THE DEPUTY CLERK: Marked as Defendant Government's No. 12 in evidence.

(Whereupon, a chart entitled, Statistical Data Regarding the Number of Federal Prisoners in Bureau of Prison Institutions in the Following Categories as of October 23, 1972, was marked Government's Exhibit No. 12 and received in evidence.)

[245] MR. KATZ: I am finished.

MR. CALIFANO: Your Honor, we have only one further witness, Director Carlson, and then we have some depositions and documents to put in.

THE COURT: Let's take care of Mr. Carlson first.

WHEREUPON—

**NORMAN A. CARLSON**

was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. CALIFANO:**

**Q** Mr. Carlson, I would like to show you a document—

**MR. CALIFANO:** Would you mark this, please.

**THE DEPUTY CLERK:** Plaintiffs' Exhibit No. 12, marked for identification.

(Whereupon, Director's letter of January 13, 1972 and attached Policy Statement was marked Plaintiffs' Exhibit No. 12, for identification.)

**BY MR. CALIFANO:**

**Q** Mr. Carlson, would you please state your name, address and present occupation for the record?

**A** Norman A. Carlson, 8702 Piccadilly Place, Springfield, Virginia, Director of Federal Bureau of Prisons, Department of [246] Justice.

**Q** Mr. Carlson, I show you Plaintiffs' Exhibit 12, for identification, which you may recall was attached to a motion Plaintiffs filed subsequent to the March 23 hearing. I ask you whether or not that is an accurate copy of the Director's letter of January 13, 1972, and the Policy Statement attached to that Director's letter?

**A** To the best of my knowledge, it is.

**Q** Thank you.

**MR. CALIFANO:** Would you mark this for identification, please.

**THE DEPUTY CLERK:** Plaintiffs' Exhibit No. 13, marked for identification.

(Whereupon, affidavit of Mr. Carlson dated November 28, 1971 was marked Plaintiffs' Exhibit No. 13, for identification.)

MR. CALIFANO: Will you pass that to the Judge.

BY MR. CALIFANO:

Q Mr. Carlson, I show you Plaintiffs' Exhibit No. 13, marked for identification, which is an affidavit, apparently signed by you, in a case in Seattle, dated the 28th of November, 1971, and ask you whether or not that is your affidavit?

A Yes, it is.

MR. CALIFANO: Your Honor, I move that Plaintiffs' [247] Exhibits 12 and 13, marked for identification, be placed in the record.

THE COURT: I would like some explanation of the affidavit. I don't understand the affidavit.

I will receive the affidavit but—

THE WITNESS: Do you want my response to the affidavits?

THE COURT: Yes.

THE WITNESS: There was a subsequent affidavit filed, which explained fully the difference between this affidavit and another one, before the Court out in the Western District in Washington. The other affidavit was signed by me several months later.

THE COURT: Is this in error, are you saying?

THE WITNESS: No. At the time this was under consideration, we did propose or consider a policy which would have permitted interviews by the press to inmates. Subsequent to that, and after very careful deliberation and study and discussion with our wardens, and other people in the correctional field, we did change our mind and did not institute the policy that we indicated in this earlier affidavit.

This was all explained to the Court by a subsequent affidavit, which was filed out there. I think it is available to the gentlemen.

THE COURT: Well then, I think we ought to have, before this proceeding, the other affidavit as well, so the [248] record is complete.

MR. CALIFANO: It is fine with us.

THE COURT: I don't think we ought to take one document out of context.

MR. CALIFANO: We did not know about the other affidavit.

THE WITNESS: It was filed very clearly in this case.

MR. CALIFANO: Do you have the other affidavit?

MR. KATZ: Do you have any more questions of Mr. Carlson?

THE COURT: Wait a minute. I asked you, Mr. Katz, do you have another copy of that affidavit?

MR. KATZ: Yes, Your Honor.

THE COURT: May I see it?

MR. KATZ: Yes, Your Honor.

I ask that this be marked as Government's Exhibit 13.

THE DEPUTY CLERK: Defendant Government's Exhibit No. 13, marked for identification.

(Whereupon, the subsequent Carlson affidavit was marked Government's Exhibit No. 13, for identification.)

THE COURT: Thank you.

I will receive the affidavit that you have offered, if you offer Government's 13 with it. Otherwise, I won't [249] receive it.

MR. CALIFANO: Your Honor, absolutely. We were not aware of this until just now.

THE COURT: Then both Defendants' Exhibit 13 and the affidavit which was marked Plaintiffs' 13 will be received in evidence so the full situation is there.

(Whereupon, Plaintiffs' Exhibit No. 13 and Government's Exhibit No. 13 were received in evidence.)

MR. CALIFANO: And the memorandum, Your Honor?

THE COURT: I haven't ruled on that. I think I need some testimony about that other document before I act on it.

Mr. Katz is asking you whether you are going to ask him anything about it or whether you are not. I am going to wait until the witness has completed his testimony before I rule on the admissibility of the other document which I think is Plaintiffs' 12.

BY MR. CALIFANO:

Q Mr. Carlson, in your affidavit, which is Defendants' 13, your second affidavit, you state that—

A I don't have a copy of that.

THE COURT: He can have the copy that was handed me. I don't need it. That is Government's 13 you are talking about now.

[250] BY MR. CALIFANO:

Q You indicated at the bottom of the first page that:

"This policy area was also a subject of discussion with over 40 state correctional administrators at a recent conference in Atlanta, Georgia, and it was reviewed with officials in the Department of Justice having a particular interest in this field."

Was that the Attorney General?

A No, it was not. As I recall, it was in the United States Attorney's office, United States Marshal's office, and others that had direct relationship with the matter of individual interviews by the press.

MR. CALIFANO: I have no further questions, Your Honor.

### CROSS-EXAMINATION

BY MR. KATZ:

Q Mr. Carlson, you have before you the Plaintiffs' Exhibit 13.

A Yes, I do.

Q When was this affidavit filed?

A December 28, 1971.

Q And this was filed where?

A In the United States District Court for the Western District of Washington.

Q What was the policy statement referred to in that affidavit of 1966?

[251] A The previous policy statement had no contact whatsoever between the press and individual inmates, either by interviews or by correspondence.



**Q** And was this previous policy statement at issue in this lawsuit in the State of Washington?

**A** Yes, it was the subject of litigation.

**Q** And what was the reason this affidavit was filed?

**A** I don't recall the specific nature of it. It was handled by our legal counsel's office. At the time, however, we were in the process of reviewing a number of our policies and procedures. We had already made a decision to change our prior policy on that. We hadn't formalized or finalized it at that time. As a result, this was filed in the case out there, indicating we were contemplating a significant change in our prior policy.

**Q** Subsequent to the date of the filing of this affidavit, what further actions were taken with respect to changing the policy?

**A** The final policy which was eventually issued did not provide for the interviews by members of the press. It did, however, provide for the press to correspond with inmates through our—

**THE COURT:** That is the policy that is before me.

**THE WITNESS:** That is correct.

[252] **BY MR. KATZ:**

**Q** Subsequent to the filing of this first affidavit, you engaged in substantial discussions of this matter with whom?

**A** It was reviewed by a number of parties and agencies that would be involved. All of our wardens, top institutional staff, as well as the administrators in the central office in the Bureau of Prisons had in-put. We discussed it with a number of other correctional officials, state and local; and it was reviewed very carefully by all of the parties that would be involved in the eventual issuance of the policy statement.

**THE COURT:** That was the matter you testified about when you were last here.

**THE WITNESS:** That is correct.

**BY MR. KATZ:**

**Q** Based on all this in-put that you subsequently received after this first affidavit was written, you changed your mind?

A Yes, the eventual policy, which is the subject of this hearing, was promulgated and it did not provide for the inmates to be interviewed, identifiable inmates to be interviewed by the press.

Q That policy, the one which is before the Court, was promulgated approximately when?

A I don't recall the specific date of its issuance. I suspect early in '72.

Q Was it in February of 1972?

[253] A Yes, I believe it was in February.

Q And upon its issuance, did you make a report to the Court in which that litigation was pending in which that first affidavit was filed?

A Yes, I am sure that was a matter before the Court in the litigation in the Western District of Washington.

Q And you fully advised that Court of the process which you have described and of the fact that you did change your mind and that you did issue a different policy statement?

A Yes, we filed a subsequent affidavit which I very carefully went over with my legal counsel and we intended to be totally candid with the Court in explaining the rationale for our change, and it was filed.

Q That is the affidavit which has been introduced into evidence in this proceeding as Government's Exhibit No. 13, and which you have before you?

A That is correct.

MR. KATZ: I have no further questions.

THE COURT: I have a couple of questions, Mr. Carlson.

Are you able to enlighten the Court in any way as to why the Attorney General, and yourself, were unwilling to attempt to implement the order of the Court that was entered in this case in the earlier proceeding, in which I strongly urged and suggested that the Bureau of Prisons attempt to outline and indicate under what conditions the Bureau felt that an interview [254] with a prisoner might be appropriate?

THE WITNESS: Your Honor, we very carefully studied your order and discussed the entire situation very carefully within the Bureau of Prisons.

It is our feeling that if we would promulgate such an order, it would immediately prompt a number of show-cause orders across the country, whenever an individual interview was turned down. We could make an order which would be very restrictive and give the warden total discretion, as many states have done. But our feeling was that if we did that, every time a case was turned down by a warden, it would be immediately subject to litigation throughout the country. We felt that this would not be desirable.

In addition, we still feel that the so-called Big Wheel theory, which was advanced to the Court, is an appropriate part of the total correctional process. That the few inmates who seek notoriety, who seek the newsworthiness can cause serious disruptions in institutions.

THE COURT: Even if you don't have to let them be interviewed?

THE WITNESS: Well, if we promulgate a policy such as you suggested, Your Honor, I am afraid what would happen would be that the vast majority of inmates that we would approve would not be the ones that the press would want to interview.

THE COURT: That wouldn't make any difference.

[255] THE WITNESS: It would in the sense that we would then have show-cause orders as to why we turned down other inmates.

THE COURT: You have show-cause orders a lot of times on a lot of other aspects of prison work now.

THE WITNESS: Yes, we do.

THE COURT: What difference—

THE WITNESS: It would greatly exacerbate the problem we already face in terms of many of these orders. It takes a substantial amount of our staff's time and our resources now.

THE COURT: In other words, it is a matter of your convenience, not a matter of the First Amendment? In other words, it would just make it difficult for you?

THE WITNESS: It would make it more difficult than it is at the present time. In addition, we feel that the policy we have promulgated is a reasonable policy.

THE COURT: I am aware of that.

So that what is presented here, I can take it to be an unwillingness on the part of the Defendants to consider any adjustment whatsoever in this policy of any kind, shape or description, with respect to interviews. Is that what you are telling me? Is that right?

THE WITNESS: Up to this point in time, the answer is, yes.

THE COURT: This is the point in time.

[256] THE WITNESS: In terms of the future, obviously, we review all of our policies and procedures, and we may subsequently make changes.

THE COURT: Do you believe that there is no category of prisoner under your direction and control that should be allowed to talk to the press, whether the man is in work release, or whether he is in college, or whether he is on some work detail? That he shouldn't be permitted under any circumstances to talk to the press? That is your penal position, is that right?

THE WITNESS: No. The position I would take, Your Honor, is that if we permitted that individual to be interviewed, it would be extremely difficult for us to say that other individuals could not also be interviewed.

THE COURT: I don't understand why.

THE WITNESS: Well, if we had such a policy, the first thing we would do, when it was denied, would be to go back into court on a show-cause order as to why we accepted one interview and not another.

THE COURT: Could you not justify that?

THE WITNESS: It would be extremely difficult in some cases and also extremely time-consuming in terms of the resources we have at our disposal.

THE COURT: So what you suggest to me is that the compelling necessity is created by the lack of governmental resources?

[257] THE WITNESS: Not in total. That is one factor. The other factor is that many inmates who would desire to be interviewed and whom the press would be interested in interviewing, could be a very disruptive influence in many of our maximum security institutions.

THE COURT: You wouldn't be required to permit any interviews in maximum security institutions.

What I find so difficult, and what I need your help on, and I'm sure that the Court of Appeals needs your help on, is the blanket character of the prohibition. I think I have some understanding from these hearings and from my experience of the kind of problems that that judge out in Washington sounded off on, but that isn't what this case is about. You have a blanket policy.

THE WITNESS: That is correct.

THE COURT: I haven't heard yet—and I wanted to give you the opportunity, because there isn't any evidence being submitted to me—as to the need of a total exclusion as opposed to what the Court indicated would be a reasonable approach to the problem in the light of the particular difficulties with which you are concerned.

THE WITNESS: Your Honor, as I have attempted to explain, and apparently have been unsuccessful, I feel if we did permit the press to interview some inmates on work release or minimum security institutions, such as the Kennedy Youth [258] Center, this would then raise the issue in all our other institutions as to why we did not permit other inmates to have the same opportunity. It would present us with a number of major problems in our facilities, such as our maximum security penitentiaries. This is one factor.

The other factor, which I mentioned, and still subscribe to, is the so-called Big Wheel theory that certain inmates in the big institution can become a disruptive force if given the publicity that many of them seek.

THE COURT: Very well. You have had your opportunity, Mr. Carlson.

Does anybody have any further questions?

MR. CALIFANO: No.

THE COURT: Thank you very much.

MR. KATZ: Your Honor, I want to ask Mr. Carlson a couple more questions.

THE COURT: All right.

BY MR. KATZ:

Q Mr. Carlson, you, of course, have already been qualified in the earlier proceedings here as an expert in the field of corrections and penology.

Do you feel that there is a need, across the board, in all areas, to treat all inmates incarcerated in your institutions, as far as possible, equally?

A Very definitely, I feel that is one of the very basic [259] tenets of sound correctional administration.

THE COURT: But you don't do that, do you, Mr. Carlson? You have people that you commit to all kinds of different types of commitment, based upon your appraisal as to the man's characteristics. You send some people to a hospital; you send some to a work camp; you let some go out on furlough; you let others not. Your whole system has built into it a whole series of differentiations between criminals.

THE WITNESS: Based upon correctional needs, Your Honor, not upon status prior to incarceration or status within the institution.

The narcotic example, the Title 2 case goes to one of our narcotic treatment programs.

THE COURT: I understand.

THE WITNESS: Which is a correctional need. A person that goes to a hospital does so because of correctional need.

THE COURT: A person goes to school because of correctional need?

THE WITNESS: That is correct.

THE COURT: And everybody that has a need for education is allowed to go and get education in your system?

THE WITNESS: Ultimately, I would certainly hope that this would be true.

THE COURT: Ultimately, but you make a determination—

THE WITNESS: When the resources are available, we [260] certainly hope so, Your Honor.

THE COURT: Well, I had thought the great virtue—I don't like to get into a debate with you and I don't mean to. You and I have worked together on many problems and I have great respect for you in your job.

THE WITNESS: Thank you, Your Honor.

THE COURT: I thought the whole strength of the Federal System was that you were attempting to build a

system that had different types of institutions, to serve different types of needs, and to treat prisoners differently, in the interests of both the punishment and confinement and rehabilitation objectives, and that you had been a leader in the correctional system in bringing that into play.

To hear you say that you treat everybody the same in the system comes to me as an extraordinary surprise.

**THE WITNESS:** Your Honor, I said that in terms of treatment. Let me explain my position. In terms of the correctional needs of the offender, I would hope that we differentiate based upon the needs of the offender for particular types of correctional treatment. In terms of over-all treatment, in terms of the inmate, what his economic status is, what his socio-economic class may be, what his prior position may be, what his race or religion may be, I hope we do treat them all equal. This is the basic tenet I was referring to. Not his correctional needs.

[261] **THE COURT:** Very well. Do you have anything further?

**BY MR. KATZ:**

**Q** Mr. Carlson, as far as you know, is it not true that the Department of Justice has taken an appeal in this case?

**A** Yes, that is correct.

**Q** At the time of His Honor's ruling earlier in this case, consideration was given to the possibility of taking an appeal?

**A** Yes, that is correct.

**Q** So might this not be one of the reasons why no immediate changes were made in the policy?

**A** Yes. As I am sure the Judge knows, this same subject has been the subject of litigation in a number of different districts across the country, the Western District of Washington being only one. We were confronted with a situation that involved a number of different districts, a number of different decisions, and we felt that the proper course in this particular case was the appeal which was noted.



**THE COURT:** That wasn't my point, Mr. Katz, for whatever value it will be to you.

Of course, the Court was well aware it was appealed and, of course, the United States has the fullest right of appeal. What I had hoped was that the appeal would be taken against an order that was worked out with the cooperation of the United States, reserving all of its rights to appeal, but that would deal with the practical problems that were presented, by [262] accommodating to the Court's order, so that the Court of Appeals would know, with the aid of the United States—which was denied this Court, flagrantly, denied this Court—what an appropriate regulation would be, consistent with my order.

At this present moment, I have not heard from the United States on that. So what I am pointing out to you is, what I was concerned with was that, not with the question of appeal, and not with the question of stay, and not with the question of the United States preserving its rights.

I have said this to your predecessors, and everybody involved in this case. I would like to see and have the assistance, and I brought it up again at the last pre-trial before these proceedings, in the formulation of an order which, if the Court is sustained, would take cognizance of practical problems within the prison system; and so far, the United States and the Defendants have refused to do that. So that the order, if I am sustained, will be an order imposed by the Court, without the benefit of the assistance of the litigants. That is, I think, an irresponsible thing for the United States to do. I have made that clear to you. I made that clear to Mr. Aikens. I made it clear to Mr. Hannon. Sometimes the United States wins and sometimes it loses; and when it wins or loses, justice is done. But the result is better achieved if the United States can give some assistance to a judge struggling with a difficult problem to meet the practical aspects of his judgment. As to [263] that, the United States has refused to give any cooperation whatsoever. I think it is a most reprehensible position in this litigation, which has nothing to do with the merits, has nothing to do with the outcome.

Particularly in this field, where we are concerned with the handling of people that we commit to these prisons, and concerning whom we get very little information, when we seek the assistance of the Attorney General, to whom we commit these people, it would seem to me appropriate that he would give that assistance; but he has refused to do so.

That is what I was talking to Mr. Carlson about, and not the legal rights. You have every legal right in the world to go everywhere. If you win, justice is done; and if you lose, justice is done. But it seems to me we need a practical order to carry out what I feel is appropriate here. If I am wrong, then it will never go into effect. But it is appropriate, I think, to assist the Court when a Court is dealing with a matter as sensitive and as difficult as this; and the refusal of the Defendants to do that, I don't believe can be justified.

I was asking whether Mr. Carlson had played a part in that determination.

THE WITNESS: Your Honor, we have reviewed—

THE COURT: It is not a question of your right of appeal.

THE WITNESS: We have reviewed this matter very [264] carefully. We have studied alternatives. As I say, this is something which has taken a great deal of staff time, both at the institutional level, my legal counsel's level, and at my level. We are very much concerned about it. We are in the process of considering this to the fullest extent possible. So I can assure you that we are cognizant of your interest in this case.

THE COURT: It isn't my interest. What I would like to have is an order that was practical and I am going to have to shape it without your help. Of course, I think that is unfortunate. I don't think that is the way the Bureau of Prisons and the Attorney General should work with the Court.

MR. KATZ: I have no further questions of Mr. Carlson.

THE COURT: Do you have any questions?

MR. CALIFANO: No, Your Honor.

Would you accept this in evidence, Mr. Carlson's memorandum?

THE COURT: I want to review it again. Let's deal with the other matters.

Thank you very much.

THE WITNESS: Thank you, Judge.

(Witness excused.)

MR. COOPER: Your Honor, we have a number of documents to offer in evidence. They have not all been marked. I think it would save time if we could take a recess.

[265-275] THE COURT: If you would like a little time to straighten that out and confer with Mr. Katz—

MR. COOPER: I think it would save the Court's time if we mark them in advance.

THE COURT: I can come back with respect to it. I have a number of housekeeping matters I want to discuss with counsel, once the record is closed. Why don't we take 15 minutes now and you gentlemen both get in line on your exhibits. Then I have some matters on my mind, some cases I wish to mention to the parties, and I want to be sure we are clear on the schedule about findings and things of that kind.

We will take at least 15 minutes. You let the Bailiff know if you want a little more time. It makes no difference to me. When you are ready, I will come back on the bench.

(Whereupon, a recess was taken.)

[276] MR. COOPER: Your Honor, we have a number of documents we would like to offer into evidence at this time.

The first is Plaintiff's Exhibit No. 14, deposition of Elie Able.

MR. KATZ: No objection, subject to the objections noted in the deposition.

THE COURT: All right.

Plaintiffs Exhibit No. 14 was received in evidence.)

**MR. COOPER:** I will point out, Your Honor, that on page 5, line 11, of that deposition appeared the name Bob Marvin Kalb, and that should read Marvin Kalb. Mr. Katz agrees to that.

**THE COURT:** All right. I don't think that will affect the outcome.

**MR. COOPER:** The next exhibit is Plaintiffs' Exhibit No. 15, the Model Act prepared by the National Council on Crime, and Delinquency which was discussed at our last hearing.

**THE COURT:** I took notice of that. I think it is well to have it in the record. It will be received.

**MR. KATZ:** We would like to make an objection to that for the record, Your Honor.

**THE COURT:** What is the ground?

**MR. KATZ:** There is no relevance to the specific [277] issue in this case.

**MR. COOPER:** I believe this is a constitutional case. It is appropriate for the Court to consider the best thinking that is available in the field. I think this Model Act would be part of that.

**THE COURT:** What is the objection? It is a model act by experts dealing with the issue of interviews, so I would like to know what your objection is?

**MR. KATZ:** If there are specific provisions in there relating to interviews, we will withdraw the objection.

**THE COURT:** There are specific provisions relating to interviews. I recall from reviewing it when the matter was first before us.

It will be received.

(Plaintiffs' Exhibit No. 15 was received in evidence.)

**MR. COOPER:** The next exhibit is Plaintiffs' Exhibit No. 16 which is the text of a speech by Mr. Maurice H. Sigler, president of the Maximum Correctional Association, and chairman of the United States Board of Parole, which was put out by the Department of Justice.

**THE COURT:** It doesn't seem to me that is an official document. The man was retiring. I have read the speech: I am familiar with it. He is a strong advocate

of interviews. It may be briefing material, but I don't think it [278] has to be received in evidence.

MR. COOPER: I think we might well brief it.

THE COURT: It is identified. It will not be received in evidence.

MR. COOPER: Next is a set of letters—Exhibit 17-A, 17-B, 17-C and 17-D—which are copies of form letters that we sent out to various correctional jurisdictions in the United States and abroad in an effort to obtain from them copies of their policy statements and regulations.

THE COURT: Well now, this is the problem that was discussed at pretrial. In response to that, you have heard from a substantial number of jurisdictions.

In some cases, as I understood it at pretrial, formal regulations were submitted to you and they will be offered. In other instances you got a letter that indicated what the policy was, and that that letter in some occasions referred to a particular incident or contained colloquy comment of some kind.

MR. COOPER: There are various types of letters, Your Honor. There are a couple that actually quote from regulations which were not attached to the letter. There are others that say "we have no written policy, but our practice is such and such." And there are others that go on to provide commentary on how a policy has worked and incidents and other matter.

[279] THE COURT: As I understand it, the United States has no objection to those responses which submit regulations. But you have objections to the others.

Is that right, Mr. Katz?

MR. KATZ: Your Honor, that is essentially correct. We have previously, each one of these was marked and they have been broken down by regulation and by letter into separate categories, and I guess we will have to go down the line with our objection.

THE COURT: I will receive the letters of inquiry indicating what was sought. There is no problem about that.

(Plaintiffs' Exhibit Nos. 17-A, 17-B, 17-C and 17-D were received in evidence.)

MR. COOPER: That is Exhibit 17-A, B, C and D?

THE DEPUTY CLERK: May I interrupt, Your Honor. I don't have any copies of those. I can't find them as exhibits. I was just wondering if you furnished us a copy?

MR. COOPER: I gave them to you and they were marked.

THE COURT: All right. Mr. Clerk, be sure you are on board as we go along, because this is the time.

We are all set on that then. Very well.

MR. COOPER: All right.

THE DEPUTY CLERK: Yes.

[280] MR. COOPER: Next, Your Honor, is Plaintiffs' Exhibit 18-A which is an Alaska regulation on access to the media.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 18-A was received in evidence.)

MR. COOPER: 18-B is the covering letter which accompanied that regulation, which makes clear that it is the current regulation in Alaska.

MR. KATZ: We object to the letter.

THE COURT: Overruled. I will receive the letter saying that it is a current regulation.

(Plaintiffs' Exhibit No. 18-B was received in evidence.)

MR. COOPER: Next is 19-A, Plaintiffs' Exhibit 19-A, a Connecticut directive dealing with the news media and access.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 19-A was received in evidence.)

MR. COOPER: 19-B, which is the covering letter from Connecticut.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 19-B was received in evidence.)

[281] MR. COOPER: 20-A, the Georgia Administrative Rules, Section 125-1.05, which expresses the news media policy of the Georgia Correctional System.

**MR. KATZ:** No objection.

(Plaintiffs' Exhibit No. 20-A was received in evidence.)

**MR. COOPER:** 20-B is the Georgia covering letter.

**MR. KATZ:** We would object to that particular covering letter.

**THE COURT:** I guess I am going to have to look at each one of these exhibits. I would appreciate your stating the grounds of your objection as we go along, Mr. Katz. It would help the Court.

**MR. KATZ:** This is clearly hearsay.

**THE COURT:** Just a moment. What exhibit are we talking about now?

**MR. COOPER:** We are talking about Exhibit 20-B which is the covering letter from Georgia.

**THE COURT:** Let me read it first. Then I will hear what you have to say.

It is a letter helpful to the United States. If they wish to object, I will sustain the objection. I think it is hearsay.

**MR. COOPER:** May I make a brief point in support of admitting it, Your Honor, even though it is hearsay.

[282] We believe there is authority for admitting hearsay evidence in a case of this sort.

I cite to the Court Dallas County vs. Commercial Union Insurance Company, LTD. 286 Fed 2nd, 388, 5th Circuit, 1961; Zippo Manufacturing Company vs. Rogers Imports, Inc., 216 Fed supp. 670, at pages 680 to 86, Southern District of New York, 1963; and United States vs. Barbati, 284 Fed supp. 409, Eastern District of New York, 1968.

**THE COURT:** Those cases don't involve information of this kind. I am familiar with two of them. Those were cases that have to do with much more routine kind of assembly of data than the discussion here which is with respect to particular incidents.

**MR. COOPER:** I am speaking generally about the commentary in the Georgia letter.

**THE COURT:** I am speaking about 21-B.

**MR. COOPER:** Right, Your Honor.

**THE COURT:** Which concerns a specific instance.



**MR. COOPER:** I am thinking, also, of the statement in that letter that: "We have experienced no difficulties in this area."

I would think a statement of that sort coming from a commissioner of corrections is an indicia of reliability.

It is not convenient for us to bring in commissioners from the 50 states here to testify. There is no convenient [283] method for obtaining this kind of information which is highly relevant to this case other than by the method that we have used.

This is a non-jury case.

**THE COURT:** This letter does not contain the statement you have just indicated to me.

**MR. COOPER:** The Georgia letter, Your Honor.

**THE COURT:** I have 21-B in front of me.

**MR. COOPER:** I'm sorry. You should have 20-B, Your Honor.

**THE COURT:** I'm sorry. I was looking at 21-B.

**MR. COOPER:** I'm sorry.

**THE COURT:** I must have misheard you. Let me look at 20-B.

That is the hearsay statement that I suppose the Government objects to. The others are within those cases. I can receive the letter without that statement.

**MR. COOPER:** I would ask that, in general, statements of that sort be received in this proceeding, Your Honor, because they are relevant to the Courts that will consider this case, to their decision on the issues in this case. And there is no other convenient way for obtaining that information. We can't bring all of the commissioners to Washington.

**THE COURT:** It isn't very precise when a man says "we have no difficulties in this area." I don't know whether [284] he is familiar with the difficulties that are in this case. That is the problem.

**MR. COOPER:** Well, we ask that it be considered for what it is worth. The statements vary in precision from one letter to the next. I don't know that we should try to articulate the degrees of precision here. I assume all statements—

THE COURT: I will receive it all except the next to the last paragraph.

MR. COOPER: All right.

(Plaintiffs' Exhibit No. 20-B was received in evidence.)

MR. COOPER: Next is Plaintiffs' Exhibit 21-A, a Kentucky directive. Then 21-B, the Kentucky covering letter.

THE COURT: You have no objection to 21-A, Mr. Katz?

MR. KATZ: No objection to 21-A, Your Honor. We object to 21-B.

THE COURT: I will sustain it as to 21-B.

(Plaintiffs' Exhibit No. 21-A was received in evidence.)

MR. COOPER: We offer 21-C and 21-D which are materials that were sent in response to our letter simply in order to—

THE COURT: I will receive them.

MR. KATZ: Your Honor, we object to them.

[285] THE COURT: Yes. But I will receive them. Those are official documents indicating the scope and nature of the correctional institution. They are admissible.

(Plaintiffs' Exhibit Nos. 21-C and 21-D were received in evidence.)

MR. COOPER: Plaintiffs' Exhibit 22-A is the Maine policy statement.

THE COURT: You have no objection to 22-A?

MR. KATZ: Just a second, Your Honor. Let me find it.

THE COURT: That is their policy.

MR. COOPER: That is their policy statement.

THE COURT: This is their formal policy statement.

MR. KATZ: I have no objection to that.

(Plaintiffs' Exhibit No. 22-A was received in evidence.)

MR. COOPER: 22-B is the letter of transmittal.

MR. KATZ: No objection.

THE COURT: It just clutters the record. It doesn't say anything.

MR. COOPER: It simply advises that as of the date of the letter that was the policy.

THE COURT: Very well.

[286] (Plaintiffs' Exhibit No. 22-B was received in evidence.)

MR. COOPER: 23-A is the Maryland policy statement.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 23-A was received in evidence.)

MR. COOPER: 23-B is the Maryland covering letter.

MR. KATZ: No objection to 23-B.

THE COURT: Just a minute. Let me look at 23-B.

MR. COOPER: I don't think there is any hearsay in 23-B.

THE COURT: There isn't any meat, either.

MR. COOPER: Again, it advises that as of the date of the letter, that is the policy statement.

THE COURT: I am going to assume these are all current.

I will not take 23-B. 23-C, I will take.

(Plaintiffs' Exhibit 23-C was received in evidence.)

MR. COOPER: 23-D is a filled out questionnaire which we received in response to our letter to Maryland.

MR. KATZ: We object to that.

THE COURT: Sustained.

MR. COOPER: 24-A is the Montana policy statement.

THE COURT: I will receive that.

[287] (Plaintiffs' Exhibit No. 24-A was received in evidence.)

MR. COOPER: If we assume that the statements are all current, then 24-B is unnecessary.

THE COURT: Withdrawn, 24-B.

MR. KATZ: 24-B is withdrawn?

THE COURT: Yes.

(Plaintiffs' Exhibit No. 24-B was withdrawn.)

MR. COOPER: 25-A is the Nebraska policy statement.

THE COURT: That will be received.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 25-A was received in evidence.)

MR. COOPER: 25-B is a set of other Nebraska regulations dealing with communications between inmates and the public.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 25-B was received in evidence.)

MR. COOPER: 25-C is the covering letter from Nebraska.

MR. KATZ: Objection.

THE COURT: Sustained.

MR. COOPER: 25-D is a Nebraska pamphlet from their [288] Penal and Correctional Program.

MR. KATZ: No objection.

THE COURT: That will be admitted.

(Plaintiffs' Exhibit No. 25-D was received in evidence.)

MR. COOPER: 26-A is the New Jersey policy statement.

MR. KATZ: No objection.

MR. COOPER: Statement of the standards.

THE COURT: That will be received.

(Plaintiffs' Exhibit No. 26-A was received in evidence.)

THE COURT: Are we going too fast for you, Mr. Clerk?

THE DEPUTY CLERK: No, sir.

THE COURT: All right.

MR. COOPER: 26-B, I will withdraw.

(Plaintiffs' Exhibit No. 26-B was withdrawn.)

MR. COOPER: 27-A is the New Mexico policy statement, memorandum 55-72.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 27-A was received in evidence.)

MR. COOPER: 27-B is a letter that the state sent us in order to explain more fully their new policy.

[289] MR. KATZ: We object to that.

MR. COOPER: It simply explains the policy.

THE COURT: I think it is part of the policy. Overruled. It will be received.

(Plaintiffs' Exhibit No. 27-B was received in evidence.)

MR. KATZ: Your Honor, this appears to be a letter to some third party. I don't see where this is part of the policy.

THE COURT: What is your next exhibit?

MR. COOPER: The next is 27-C.

MR. KATZ: What was Your Honor's ruling on that?

THE COURT: I said that it would be received.

MR. COOPER: 27-C is the New Mexico covering letter.

MR. KATZ: We object to that.

THE COURT: Sustained.

MR. COOPER: 28-A is the North Carolina policy statement.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 28-A was received in evidence.)

MR. COOPER: 28-B will be withdrawn.

(Plaintiffs' Exhibit No. 28-B was withdrawn.)

MR. COOPER: 29-A is an Ohio administrative [290] regulation.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 29-A was received in evidence.)

MR. COOPER: 29-B is the Ohio covering letter.

MR. KATZ: Objection.

MR. COOPER: It contains the Commissioner's interpretation of the regulation.

THE COURT: I will sustain the objection.

MR. COOPER: 29-C is an Ohio—

THE COURT: Many of these exhibits are helpful to your case, Mr. Katz.

MR. KATZ: I understand. But we want to be consistent in our position.

THE COURT: Consistency is not the mother of virtue.

MR. COOPER: 29-C is an Ohio task force report containing a comprehensive study of the Ohio Correctional System, in the context of which the Ohio regulation was promulgated.

MR. KATZ: We object to that.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 29-C was received in evidence.)

THE COURT: Now, I guess I need another folder, Mr. Clerk. We are into another bunch now.

[291] Thank you, sir.

THE COURT: Oregon is 30-A?

MR. COOPER: 30-A is the most relevant Oregon policy statement.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 30-A was received in evidence.)

MR. COOPER: 30-B is a set of other Oregon policy statements which bear on inmate access, contacts between inmates and the community.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 30-B was received in evidence.)

MR. KATZ: They seem to have a great many things here, Mr. Cooper.

MR. COOPER: There are several together. I picked out the one most pertinent to our inquiry and made it 30-A.

MR. KATZ: Which one is that?

MR. COOPER: Oregon policy statement G-7.

And 30-B is policy statements G-8, 18 and OSP policy No. 2. These deal with related areas.

THE COURT: They will be received.

MR. COOPER: 30-C is a set of Oregon annual reports on their institutions.

MR. KATZ: We object to those.

[292] THE COURT: It will be received.

(Plaintiffs' Exhibit No. 30-C was received in evidence.)

MR. COOPER: 30-D is withdrawn.

(Plaintiffs' Exhibit No. 30-D was withdrawn.)

MR. COOPER: 31-A is a Pennsylvania administrative directive.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 31-A was received in evidence.)

MR. COOPER: 31-B is withdrawn.

(Plaintiffs' Exhibit No. 31-B was withdrawn.)

MR. COOPER: 32-A is the South Carolina policy statement as shown in the covering letter which is offered as Exhibit 32-B. 32-A has no identification on it.

MR. KATZ: We have no objection to 32-A and will stipulate that it is the South Carolina policy. We do object to 32-B.

THE COURT: I will sustain the objection as to 32-B, with the stipulation that 32-A from the South Carolina Department of Corrections adopting the uniform policy and procedural guidelines of the Association.

[293] (Plaintiffs' Exhibit No. 32-A was received in evidence.)

MR. COOPER: 33 is a letter from Virginia quoting a Virginia statute as the basis for prohibition of interviews with inmates in Virginia.

THE COURT: That will be received.

MR. KATZ: No objection.



(Plaintiffs' Exhibit No. 33 was received in evidence.)

MR. COOPER: 34-A is a Wisconsin letter quoting a regulation.

THE COURT: It will be received.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 34-A was received in evidence.)

MR. COOPER: 35-A—

THE COURT: What about 34-B? 34-B seems to be—

MR. COOPER: A Wisconsin annual report.

MR. KATZ: No objection, Your Honor.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 34-B was received in evidence.)

MR. COOPER: 35-A is a Vermont visiting regulation. 35-B is a Vermont mail regulation. 35-C is a Vermont letter making clear that 35-A and 35-B both include the press.

[294] MR. KATZ: I don't seem to have copies of those, Mr. Cooper.

MR. COOPER: I gave them to you yesterday, Mr. Katz.

MR. KATZ: May I look at them.

Your Honor, we do object to this entire Vermont scheme. The regulations on their face have no bearing to press interviews, and the statement in the letter to the fact that they do is hearsay.

THE COURT: I will receive both the statements and the letter.

(Plaintiffs' Exhibit Nos. 35-A, 35-B and 35-C were received in evidence.)

MR. COOPER: 36 is a letter from Alabama which states the Alabama policy, the only form to our knowledge in which it has been stated.

MR. KATZ: May I have a moment, Your Honor, to find that.

We object to that letter.

THE COURT: Sustained.

MR. COOPER: 37 is a letter from Arizona.

MR. KATZ: Objection.

MR. COOPER: Setting forth the Arizona policy.

THE COURT: Sustained.

MR. COOPER: Perhaps it would save time, Your Honor, [295] if I state that Exhibits 38 through 53 come from states which have no formal policy on press access to inmates. The policy in these jurisdictions is unwritten, but we do have in these letters statements on the authority of the chief executive offices of the corrections departments as to what their practice actually is.

In some cases other documents were sent—annual reports and similar documents.

MR. KATZ: On that basis we object to Plaintiffs' Exhibit Nos. 38 through 53 for identification.

THE COURT: I am going to reserve ruling on this latter group. I will deal with it in my decision. I do think that the Court of Appeals is entitled to know whether there is a policy or not in these institutions. Quite apart from the comments in the letters, it seems to me the letters perhaps are admissible simply for the purpose of saying there isn't any policy.

MR. COOPER: Any formal written policy.

THE COURT: Any formal policy, and it is done on an ad hoc basis.

I think perhaps they are admissible for that limited purpose. So I will reserve ruling on this group.

MR. COOPER: There are additional exhibits, Your Honor. Plaintiffs' Exhibit 54-A—

THE COURT: Just a moment. I will get that folder [296] from the deputy clerk.

What is your first one?

MR. COOPER: 54-A is a set of U. S. Army regulations, 190-4. Within those regulations are provisions dealing with press access to inmates.

THE COURT: They will be received.

MR. KATZ: We have no objection to the Army regulations.

(Plaintiffs' Exhibit No. 54-A was received in evidence.)

MR. COOPER: 54-B is the annual report of the Army Correctional Training Facility.

MR. KATZ: We object to that.

THE COURT: I am going to receive all of these U. S. Government documents.

MR. COOPER: That would cover 54-B, 54-C and 54-D.

THE COURT: They will be received.

(Plaintiffs' Exhibit Nos. 54-B, 54-C and 54-D were received in evidence.)

MR. COOPER: 54-E is withdrawn.

(Plaintiffs' Exhibit No. 54-E was withdrawn.)

MR. COOPER: 55-A is a letter from the Department of the Navy quoting the Navy regulations.

[297] THE COURT: 54-E is a letter from the Department of the Army that you withdraw?

MR. COOPER: I am withdrawing, yes.

55-A, I withdraw that, from the Navy.

(Plaintiffs' Exhibit No. 55-A was withdrawn.)

MR. COOPER: 55-B quotes from a Naval regulation.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 55-B was received in evidence.)

MR. KATZ: We will stipulate to that only to the extent that it quotes from the regulations, but we object to the last two paragraphs on page 2.

THE COURT: I will sustain that objection.

MR. COOPER: 56-A and B are of the same character as the documents from the states on which you have reserved.

THE COURT: I will reserve ruling on 56-A and B.

MR. COOPER: 57-A is a set formal prison rules from England which includes provisions on press access to inmates, but only as explained in the covering letter from England. That is, the provisions in the prison rules do not in terms apply to newsmen. But the covering letter explains that they do.

It is a similar situation to the one in Vermont, with a reverse result.

MR. KATZ: We will object to it on the same basis.

[298] THE COURT: I will receive those, 57-A and B.

(Plaintiffs' Exhibit Nos. 57-A and 57-B were received in evidence.)

MR. COOPER: 58-A is an extract from the New Zealand Department of Justice, Penal Division, Manual General Orders.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 58-A was received in evidence.)

MR. COOPER: 58-B is a set of extracts from the New Zealand Penal Institutions Regulations, 1961.

MR. KATZ: No objection.

(Plaintiffs' Exhibit No. 58-B was received in evidence.)

MR. COOPER: 58-C is the annual report of the New Zealand Department of Justice, 1971-72.

MR. KATZ: Objection.

THE COURT: I am going to receive both of those. They are governmental reports, 58-C and D.

(Plaintiffs' Exhibit Nos. 58-C and 58-D were received in evidence.)

MR. COOPER: 58-E, I withdraw.

(Plaintiffs' Exhibit No. 58-E was withdrawn.)

MR. COOPER: 59 is a letter from Canada quoting a [299] Canadian regulation.

MR. KATZ: We object to that letter.

THE COURT: It will be received.

(Plaintiffs' Exhibit No. 59 was received in evidence.)

MR. COOPER: 60 is a letter from Israel stating the policy, but there is no citation to any formal provisions of law.

MR. KATZ: We object to that.

THE COURT: It will be received.

[Plaintiffs' Exhibit No. 60 was received in evidence.]

MR. COOPER: No. 61 is a document, a book which was qualified in the deposition of Hans W. Maltick, which will be offered this morning. Mr. Maltick stated in that deposition that the authors of this book are some of the best minds in the field of professional study of corrections. We believe that the document will provide something more than an impressionistic basis for the Court to assess inmate social relations, the role of leaders, the emergence of leaders within a prison population.

THE COURT: I will take judicial notice of it.

MR. KATZ: It will not be received in evidence, Your Honor, but you will take judicial notice of it?

THE COURT: By taking judicial notice of it, it [300] becomes a part of the matters on which I can decide the case. There is no need to put it in evidence.

MR. COOPER: Plaintiffs' Exhibit 62 is a copy of a book by George Jackson. We offer that book not for the truth of any of the statements by Mr. Jackson in the book, but solely for two purposes.

The first is to show that the book was published in October of 1970, and that has a bearing on the proper assessment of the testimony of Mr. Procunier with respect to the career of George Jackson in California institutions.

And, secondly, we offer it to show the nature of the book that Mr. Jackson had published in October 1970.

THE COURT: I will not receive it. I am familiar with the book. I have read it.

MR. COOPER: Your Honor, we believe the date of publication is relevant to Mr. Procunier's testimony. He testified that from August of 1970 to June of 1971 Mr. Jackson had 33 interviews. And that on the basis of those interviews, he became a big wheel. We believe it is relevant that a book by Mr. Jackson of that character was published in October of 1970, and that is relevant in assessing Mr. Procunier's causal analysis of Mr. Jackson's rise to prominence.

THE COURT: I have ruled that I will not receive it.

MR. COOPER: Exhibit 63 is the deposition of [301] Mr. Machacek.

MR. KATZ: Your Honor, we are going to object to the deposition of Mr. Machacek, for this reason: Mr. Machacek was a reporter for the Rochester Times, Your Honor, and what is brought out in his deposition is merely that in connection with the incident which occurred at Attica in September of 1971, Mr. Machacek wrote a story which was based on his visit to the county morgue in Monroe County, and he learned certain things as a result of that visit.

Mr. Machacek never visited a prison himself and has had no experience whatever in prison journalism. So I don't see that anything in that deposition is relevant to the issue in this case.

THE COURT: That objection seems to be well taken. I think I have to look at it. It is very hard to rule on something this long. I am familiar from reading the press and the Attica report of the role he played there.

MR. COOPER: Your Honor, we believe his deposition is relevant in showing the disadvantages in taking official statements about prison conditions and events in prisons at face value, and thus the need and thus a showing tending to show the need for reports to pursue their inquiries.

THE COURT: I will have to look at his deposition before I rule.

MR. KATZ: I submit there is ample testimony on that. [302] I feel there is nothing in the—

THE COURT: You don't accept that testimony, Mr. Katz. That is the difficulty with it. If you concede that point, there is no problem.

MR. COOPER: Your Honor, Plaintiffs' Exhibit No. 64 is the deposition of Peter Bensinger.

THE COURT: See, I don't even know who these people are. I just want to know is there any objection to it?

MR. KATZ: No.

THE COURT: Very well. It will be received then.

(Plaintiffs' Exhibit No. 64 was received in evidence.)

MR. COOPER: There is one correction that I believe should be made, a substantive correction.

Your Honor, on page 48, at line 16 of the deposition, the symbol for "answer" should be inserted before the word "Well."

A part of that answer is transcribed as part of a question.

THE COURT: Very well.

MR. COOPER: Plaintiffs' Exhibit No. 65 is the deposition of Hans W. Maltick, and there are several substantive corrections for this deposition which Mr. Katz and I have agreed upon.

THE COURT: Then I suggest you file them on a piece [303] paper.

MR. COOPER: Very well, Your Honor.

MR. KATZ: We have no objection to the admission of the deposition.

THE COURT: All right. It will be received.

(Plaintiffs' Exhibit No. 65 was received in evidence.)

THE COURT: File a piece of paper to go along with the front of it, so anybody that picks it up will be aware of those changes.

MR. COOPER: We have no further exhibits to offer, Your Honor.

THE COURT: Do you have any, Mr. Katz?

MR. KATZ: We have nothing further, Your Honor.

THE COURT: Then the record is closed.

I do briefly want to cover further proceedings in this matter.

It was agreed at pretrial that both sides would submit briefs and proposed findings of fact within two weeks. That would be what date, Mr. Clerk, two weeks from today?

MR. CALIFANO: Your Honor, since the transcript will not be ready until Monday, I wonder if we could have two weeks from Monday.

THE COURT: That is all right with me, although you have most of the transcript already. You have yesterday's [304] proceedings, don't you?



What is two weeks from Monday? What date would that be?

THE DEPUTY CLERK: December 11th, Your Honor.

THE COURT: Very well. December 11th, then, proposed findings and briefs.

I have also requested any assistance that counsel wish to give with respect to the form of the order within the determinations that the Court has made.

On the legal question, I feel that there are cases which apparently the Court of Appeals is not aware of, or at least did not mention in their order, which ought to be included in the briefing, in addition to the ones that they have mentioned.

I think it important for the parties to consider Klein-dienst vs. Mandel, decided by the Supreme Court on June 29th, which has timely relevant discussions of the issues that are before me, and I gather from the transcript that that decision was not even brought to the attention of the Court of Appeals when reference was made to other decisions of the Supreme Court that same day.

I also think the parties should consider Police Department of the City of Chicago vs. Mosley, decided by the Supreme Court on June 26th; Lloyd against Tanner, decided by the Supreme Court on June 22nd; and the decision of our Court of Appeals in Womens Strike for Peace vs. Morton, decided July [305] 14, 1972.

I find in all of these relevant discussion of the issues that are before the Court, and would appreciate the benefit of any comments counsel would have to make concerning them.

I guess that is all we have to do.

MR. CALIFANO: Thank you, Your Honor.

THE COURT: All right, gentlemen.

My plan is to send the matter, my report, back to the Court of Appeals without fail the first week of January. I intend to spend the Christmas holidays doing whatever I have to do on this matter, and, therefore, I really don't feel that I can give any extensions with respect to these time limits.

This matter is still held in the Court of Appeals under the Supreme Court stay, and I think it important that I report promptly in my special role in this referral.

So I am going to get it out in the first week of January without fail.

Thank you, gentlemen.

(Whereupon, at 12:20 p.m., the hearing was concluded.)

**CERTIFICATE OF COURT REPORTER**

I, Ida Z. Watson, certify that the proceedings in the above-entitled cause on November 21 and 22, 1972 were reported by me and other Official Reporters and that the foregoing Pages 1 to 305, inclusive, constitute the official transcript.

/s/ Ida Z. Watson

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**Civil Action No. 467-72**

**WASHINGTON POST CO., ET AL., PLAINTIFFS,**

**vs.**

**RICHARD KLEINDIENST, ET AL., DEFENDANTS.**

**Washington, D. C.**

**Monday, November 20, 1972**

**Deposition of**

**ELIE ABEL,**

a witness called for examination by counsel for the plaintiffs, pursuant to notice, copy of which is attached to the court copy of this deposition, at the offices of Williams, Connolly & Califano, 1000 Hill Building, Washington, D. C., by Charles H. Wilson, Jr., Esquire, before Eileen King, a Notary Public in and for the District of Columbia, beginning at 11:00 o'clock a.m., when were present on behalf of the respective parties:

**[2] For the plaintiffs:**

**WILLIAMS, CONNOLLY & CALIFANO**

**By: CHARLES H. WILSON, JR., ESQUIRE**

**1000 Hill Building**

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**For the Defendants:**

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**United States Courthouse**

**Washington, D. C. 20001**

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**ELIE ABEL**

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[3] WHEREUPON,

ELIE ABEL,

the witness, called for examination by counsel for the plaintiffs and, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. WILSON:

Q Will you state your name and residence address for the record?

A My names is Elie, E-l-i-e Abel, A-b-e-l. I live at 435 Riverside Drive, in New York City.

Q What position do you hold?

A I am the Dean of the Graduate School of Journalism at the Columbia University, also the Goedfrey Lowell Cabot Professor of Journalism.

Q How long have you held the position of Dean of the Graduate School of Journalism?

A Since February 1, 1970.

Q Have you had any working experience in journalism, prior to that position?

A Yes, about twenty-five years of it.

Q Will you describe your working experience as a journalist?

[4] A Yes, I was a student at the school of which I am now the Dean, in 1941, and World War II came along and somewhat interrupted my career for four years, but I resumed it immediately afterward, first as a foreign correspondent in Germany, in the Occupation of Germany. In 1946 and 1947, for the North American Newspaper Alliance.

I then spent a couple of years at the United Nations, as a correspondent for a now defunct newspaper called Overseas News Agency.

In 1949, I joined the New York Times and spent ten years with the Times, most of those years as either a national correspondent or a foreign correspondent.

For two years after that, I was Washington Bureau Chief for the Detroit News, and in 1961, I joined NBC, where I spent the following almost nine years assigned to the Diplomatic Corps and for three years in between, as the London Bureau Chief.

Q During the course of your career in journalism, have you won awards or prizes?

A Yes, I have. I won the George Foster Peabody Award which is, I guess, the most prestigious award in broadcasting. I would think it was 1969, for work in '68. There is always a year's lag between the time you do the work and the time you [5] get the award.

That was for radio news reporting, and the same year, 1969, and also in 1970, I won an award from the Overseas Press Club for the best interpretation of International News in the broadcast field.

Q Have you written and published any books?

A Yes, I have. I published a book in 1966, called "The Missile Crisis," published by Lippincott, which was a fairly definitive study of the Cuban missile crisis of 1962.

In 1971, I published, jointly with my former competitor, Bob Marvin Kalb, a book called "Roots of Involvement" which was an effort to trace the American involvement in the Far East, from the beginning of the Republic, through Viet Nam, and now I am working on

Q The School of Journalism is a graduate school?

A It is.

Q How many students are there in the present class?

A The last count was 127, regular Masters candidates.

Q How many applications did you receive last year from students?

A Close to 900.

Q Will you name some of the men of the faculty at Columbia School of Journalism?

[6] A I would be happy to. The full-time faculty includes a number of men, very prominent in journalism. For example, Fred W. Friendly, former President of CBS News, who is the Edward R. Murrow professor of Broadcast Journalism.

Norman Isaacs, who has the title of Editor in Residence. He was, until recently, the Executive Editor of the Louisville Courier-Journal and Times.

Professor Penn Kimball, who is a rather well-known scholar in the field of political science and journalism.

John Hohenberg who is a rather renowned teacher and writer on journalism matters.

That will do. I could give you ten more.

Q Are there any people now working in journalism, some prominent graduates of the Columbia Journalism School?

A Yes, there are a good many. Our school is fortunate on the whole, in turning out people who tend to rise to the top of their profession, and if I had to name any current people, I mean people who are well known in the field today, I suppose I would have to include Hugh Simmons, the Managing Editor of the Washington Post, and A. L. Otten, who is the Washington Bureau Chief of the Wall Street Journal.

Flora Lewis, the Paris Bureau Chief of the New York Times.

[7] George Hermann of CBS News, Alice Townsend of CBS News—a fair number of people in all the networks but most of those I mentioned were my contemporaries, classmates, and so forth. I don't think I could give a complete catalogue.

Q That is fine.

A Oh, and the late Marguerite Higgins. She was a classmate of mine too.

Q In making the decision that you made, about four years ago, to leave NBC and assume your present post as Dean of the Columbia Journalism School, did the school's reputation have any bearing on your decision?

A It most assuredly did. The school's reputation is one moreover, that I, as a graduate, was concerned about maintaining, and that reputation on the whole is an excellent one.

Clearly. I think also there was at stake, the matter of loyalty of an alumnus toward the institution that helped to make him.



**Q** Is there such a thing as ranking in journalism schools?

**A** There is. I don't take much stock in it myself, but I think if you ask knowledgeable people in the field, they will tell you that Columbia has been one of the best institutions of its kind, in that it does enjoy a preeminent reputation, both nationally and internationally.

[8] **Q** Is there anything distinctive about the curriculum at the Columbia Journalism School?

**A** I think so. I think there are two elements there. One is the fact that we are in New York City, and that we are able to use the streets and courts and the City Hall, and all the other institutions of New York City, as a laboratory.

We send our students out on assignments and there they run into all the problems that a professional journalist has to do, in trying to get the truth, or as close an approximation to it as they can, everyday.

That, plus the fact that our school is, I think, fairly well known, as being very professionally oriented, rather than theoretically oriented.

**Q** What degree is conferred by the Columbia School of Journalism?

**A** They receive Master of Science in Journalism.

**Q** How long does it take to acquire that?

**A** One academic year with a very intensive program.

**Q** What emphasis, if any, is placed in the curriculum on newspaper gathering techniques?

**A** I think you have summed up the curriculum, in mentioning news gathering techniques. I think there are two main news gathering techniques and also the writing, and that is [9] the presentation—the effective presentation—of the news you have gathered, but news gathering is a very important part of it. In fact, our central-core curriculum consists of a variety of courses under the overall headline, The Media In Society, but known, less formally and more accurately as reporting and writing.

**Q** What emphasis, if any, is placed upon interviewing?

A A great deal—the interview is clearly the fundamental method of reaching out to people who have information, in getting from them that information, so that you, in turn, may then communicate to a larger audience.

Q Are students instructed, or encouraged to use the interview process, news gathering techniques?

A Yes, I believe that is a bit of an understatement. The interview, the direct face-to-face meeting with a person, who is either involved in a news-making situation or has been the most direct witness to it, is, we feel, indispensable, and we instruct our students to settle for nothing less.

Now there are cases obviously in which you don't always get to the man who was there but, in that case, we always advise people to inject into a copy a note of caution, if the material is being filtered through another person, attributed to that other person.

[10] Q You make it clear—

A That you can't vouch for this, on the basis of your own observations, and your own contacts with the source.

Q Is that the old caveat you see in the newspapers that Mr. Smith could not be reached for comment? Is that what you are referring to?

A Not referring merely to that—I am referring to a situation, unhappily there have been cases of this kind, in which a source, generally a spokesman for an Association, or sometimes the Government, or the City of New York, or what have you, tells a reporter something that frequently turns out to be something less than the truth. I have had that experience repeatedly in Washington, D. C. and elsewhere. The official spokesman who frequently—not frequently, because they want to lie, but because they are told to or because they don't know enough about what actually happened to be able to answer the question on their own, authority of their own knowledge.

Q Is it because of that situation that students are advised to make clear the source of their story?

A To make clear, if the source is not, in fact, the person most directly affected, to identify the source, so the reader is not misled.

Q Has it been your experience, as a working journalist, [11] that the accurate and effective reporting of news has a critical dependency on the opportunity for face-to-face interviews?

A I would say so, in most cases, yes. There is a great deal that a skillful reporter gets out of a face-to-face meeting with a source, that would not be available by any other means than the direct face-to-face meeting.

I can think of any number of cases in which the words uttered by a person in this situation may read one way in cold print, but may read somewhat differently, when the reporter is able to say, "Well, at the moment, the man said this, there was a particular expression on his face or tone of his voice". I think, if you filter those things out, you tend to get a less accurate and less complete account of what has been reported.

Q Can you recount, from your own experience, any particular incident where the opportunity for face-to-face interview was important in the development of a story?

A I can think of a good example. I tried to sort out and see what is the best example I can cite. Let me cite one that goes back quite a long way.

In 1956, '57 and '58, I was with the New York Times in Eastern Europe and working in what were essentially dicta- [12] torial regimes, calling themselves Communists, in Yugoslavia, Poland and Czechoslovakia, and it was perfectly obvious that if you were to content yourself with what an official spokesman would tell you, in a public place, that is, at a conference or in any kind of formal announcement, you would not only be misleading yourself but misleading your readers about what, in fact, was happening.

Even in that situation, where you had a fairly active secret police spying not only on you, the foreigner, but on the officials of the Government concerned, the face-to-face contact became all the more important.

I can recall for example, the flurry that arose, I think in 1957, between the Government of Yugoslavia and the government of the United States, because the United States Government perceived, or thought it perceived that the Yugoslavs who had broken with the Russians were

about to cement their old alliance with the Russians again, and it turned out not to be true, but people were leaping to conclusions on both sides of the water and I happily was one of those journalists who did not leap to that broad conclusion and that was based largely on the fact that there were at least two people in the Yugoslav Government who were willing to talk very frankly to me about what was actually happening, as [13] against what the newspapers said was happening, but always on a one-to-one basis. They would not do it in public, as part of a public spectacle, and this meant sometimes going for a walk in the park together or going to somebody's apartment and turning on a shower, and talking over the sound of the shower—that type of thing, but I am quite confident that I could not have gotten the information I did from these people except on that—except on face-to-face encounter.

Q Dean Abel, I will read to you two sentences from a brief filed by the Government, in a case in the Court of Appeals. You may read along from that excerpt and after reading this in the record, I will ask you some questions based upon it.

A May I just read over this copy?

Q Surely.

These two sentences appear on pages 25 and 26 of the Government's brief in the Court of Appeals. They read as follows:

"The lack of any 'abridgement' of 'the freedom of the press' is underscored by the fact that the Bureau has carefully provided for a comprehensive system of reasonable alternatives under which the press has full opportunity to inspect prisons and to learn about [14] and report on prison conditions and prisoners' grievance. Thus, under the Bureau's Policy Statement, press representatives may visit, inspect and photograph federal prisons; inmates are permitted to directly inform press representatives of prison conditions and prisoners' grievances through sealed, un-inspected mail, written and delivered promptly to any press representatives; press representatives are per-

mitted to initiate correspondence with particular inmates or to follow-up on mail received from inmates by writing to particular inmates in letters which are inspected only for contraband or matters inciting illegal action; and prison officials are required to 'give all possible assistance' to press representatives 'in providing background and specific reports on inmate complaints.'

Dean Abel, my questions are these: If a student at The Columbia School of Journalism was assigned to do a story on prison conditions or prisoner's grievances, would you be satisfied with his performance if he pursued only the sources listed by the Government?

A I would not.

Q Why is that, sir?

[15] A Because it seems to me that none of what the Government here has chosen to call reasonable alternatives seems like a reasonable program to a journalist or to a prisoner as it does to the administrators of the prison.

We have had enough cases, it seems to me, over the years, certainly an abundance of cases, in which prisoner's grievances are not generally made known until after fairly serious trouble has developed in an overt way.

This suggests to me that if this system, in fact, is supposed to operate, it is not operating as well as it should. Moreover, it would seem to me that, particularly on the matter of correspondence between press representatives and inmates, as described here, I can see—it seems to me a fairly simple situation in which a prisoner, knowing that the correspondence is going to be looked at by a third party, would, to a degree—well he would have to take that into account in writing his letter.

I can see a potential chilling or intimidating effect, so that I think if you are talking about a student's writing, I would want to be satisfied that he made efforts to establish direct contact on a face-to-face basis, with the people concerned.

Q If his assignment included a story on prisoner [16] grievances, would face-to-face contact be with the prisoners having the grievances?

A I would think so. I wouldn't want it filtered through a third party.

Q Have you had any experience, Dean Abel, in writing about prisons, during your career?

A My experience there is very limited. I think I once covered some trouble, many years ago at a penitentiary in Michigan, Jackson, Michigan, but that was a long time ago. My recollection of the details is a little foggy, at this point. I would argue however, that the position of a prisoner in an institution of this kind is not all that different from a citizen of a totalitarian country, which is one place I have had quite a lot of experience.

MR. KATZ: I object to the answer as not being responsive to the question.

BY MR. WILSON:

Q Based on your experience, do you have any reason to believe that the gathering of news from a prison should be any different from gathering news from other sources?

A I think the essential principle that I would stick to here is that the journalist ought to try for direct personal contact with the prisoner. Obviously we are talking about a [17] hypothetical, but with the prisoner whose story he is trying to tell.

Q If you wish to do a story on prisoner's grievances or prison conditions, would you find adequate those sources of information?

A Let me run over them again. It seems to me first, the business of visiting, inspecting, and photographing federal prisons—I am glad that provision is there.

We have all however, I think, as working journalists seen situations in which, when an outside visitor appears, whether he is in an Army camp or a prison or wherever, he tends to see what is shown to him, and what is shown to him can, in certain circumstances, be something less than a true picture of the whole institution.



On the matter of mail, I would find written communication from the prisoner, while conceivably of some value, in alerting one to a situation, on the whole, I would find that only of supplementary value to the face-to-face meeting, for the man who wrote the letter.

The reason for that being that, for one thing, a great many people are rather more eloquent and reveal more in face-to-face conversation, than they do in writing. Obviously we are talking again about hypothetical cases. I can see [18] problems of literacy, with low capacity for self expression, on the part of some prisoners. I have heard of cases in which what seemed to be very eloquent and forceful letters coming from prisoners, but it frequently turned out, I believe, that those were principally by fellow prisoners who had more facility with the language, so you again get this inclusion of a third party into what I think ideally should be a one to one relationship.

So that, in short, no, I would not be satisfied with those means.

**Q** Why would you not find information provided by the prison authorities adequate for your purposes?

**A** Essentially because I am unwilling—as I hope all journalists are unwilling—to abandon their own critical judgments, in favor of what any authority chooses to tell you, at any given moment.

I have had ample experience with authorities, very highly placed authorities, telling journalists what it suits them to tell. It sometimes is a fraction of the truth. It sometimes is a total lie.

I happened, on a particular Saturday afternoon, in 1960, to be in the State Department Press Room when a spokesman for the Department of State came downstairs and told us [19] that the two U-2 planes that the Russians had shot down—they claimed had never been over Soviet territory or, if inside, it was a change perhaps of the wind having blown it across.

From my knowing the man who made the statement, my guess is that was all he knew and that is what he told to us. What he was told to say was a lie as indeed President Eisenhower was forced to acknowledge, in rath-



er humiliating circumstances at a Summit conference in Paris in June or May of 1960.

So the fact that an official agency says something doesn't make it true, and I think the press is frequently doing a disservice when it simply reports as truth what an official of an agency said. There are many more examples that I could cite.

MR. WILSON: I have no further questions.

### EXAMINATION BY COUNSEL FOR THE DEFENDANT

BY MR. KATZ:

Q Dean Abel, just for clarity of the record, except for the one instance that you mentioned in Michigan, many years ago, you have not had any personal experience in covering prison matters.

A That is correct.

[20] Q You have never, of course, run a prison or worked in a prison.

A No, I would want the record to show that, nor have I ever been an inmate.

Q You yourself have never interviewed a prisoner?

A No, I have not.

Q Do you have any personal knowledge of the problems which face those who are charged with running prisons?

A I am familiar with some of the things that they have said about their problems, but I have not—not having run a prison myself, I have no personal knowledge.

Q Mr. Wilson, earlier in your direct examination there was read to you the policy of the Federal Bureau of Prisons, respecting contact between the media and the Federal institutions and the inmates therein.

Now you would not say, would you, that this amounts to a blackout on news, related to the prison, would you?

A No, I would not. I would, however, say it amounts to less than total access to the prisoners, their complaints and grievances, in my judgment.

**Q** This is only because of the reason that personal interviews with the inmates are prohibited?

**A** No, I think if you go back over my answer, in answer to one or two questions Mr. Wilson posed, I think you will [21] find that I did put a lot of stress on personal interviews with prisoners, but I also made the point that, when the press is invited into an institution of that kind, it tends to see what the prison authorities want it to see.

**Q** If I were to tell you, Mr. Abel, that under the policy of the Bureau of Prisons, a newsman who visited a prison would be permitted to tour and visit any portion of the prison that he desired, would you change your position?

**A** I am not sure I would because I also have had some experience with a gap between policy and reality, not in the Bureau of Prisons, but in a great many other institutions.

**Q** But assuming as a fact, for the purpose of the present discussion, that this were the case, would you change your position?

**A** I would still feel that access to the prisoner who has a story to tell is an indispensable part of the job of keeping the public informed about what is happening in a public institution.

**Q** Mr. Abel, when you described your reaction to the Bureau of Prisons' policy, I believe you also indicated you felt that the value of outgoing correspondence from inmates was limited, because of the fact that this correspondence was read by third parties.

[22] Now, if I were to tell you that the policy of the Bureau of Prisons is that outgoing correspondence from inmates is sent by the inmates sealed in envelopes which are not read or inspected—

**A** I read that. I think there may be a misunderstanding. I was referring—there is, I believe I can quote it here directly from the policy statement:

Press representatives are permitted to initiate correspondence with particular inmates or to follow up on mail received from inmates by writing to particular in-

mates in letters which are inspected only for contraband or matters in citing illegal action.

Q You are referring to in-coming correspondence?

A Yes.

Q I believe that, in your earlier discussion, on direct examination, it appeared to me you had the impression that the same was true, with respect to outgoing mail.

A That was not my impression. I think there was a misunderstanding. I have read the statement and I understand it.

Q Do you feel that, under those circumstances, the policy under which prisoners can get outgoing correspondence without censorship of any kind is a valuable source?

[23] A Since we are talking of hypotheticals, you are asking me to pass judgment on things I have not seen in operation. I am being hypothetical for the moment. If I were a journalist who received a letter, unsolicited from an inmate of such an institution in which he made whatever complaint he had to make, I would think that, before rushing into print with that information, I would want to go to the prison and ask to see the prisoner and learn more than perhaps the prisoner himself provided in the letter, by way of verifying and investigating the matter further. That is what a responsible journalist would do.

If he simply received a letter in the mail from a person he had never seen and had no way of identifying him, I think that would, at best, serve as a trigger to propel him into investigating the situation which he would have to do, I think, by more direct means than simply reading the letter.

Q But this purpose can be served, at least to some extent, by return correspondence and a visit to the institution, can it not?

A In fact, I suggested a visit to the institution, but for me an important part of the visit would be to talk to the man who wrote the letter.

Q Mr. Abel, do you have an opinion, based on expertise, [24] respecting whether press attention given to demonstrations, protests and so forth, has the effect of

encouraging such protests or aggravates it or prolongs them?

A That is a fairly frequent argument which is made nowadays. I am not one who believes demonstrations arise only or even primarily for the purpose of attracting the media attention, though I would note that, in this rather publicity-oriented country of ours, is ruled out in certain cases. I am not sure what the relevance of that is. At this point, however, this is a matter that is debated hotly.

Do you want to sharpen your question just a little bit? I didn't know I came here to testify about public demonstrations.

Q Well, do you know, in your experience, of any situation in which a public demonstration or protest has been aggravated or prolonged, or even initiated by the fact that it was expected that extensive media coverages would be given to it?

A I can't cite a particular demonstration in which I knew this to be the case. I am inclined to believe—I think if you read Jerry Rubin's book, you will find he says quite flatly that certain of the yippy or hippy or whatever they were, demonstrations, in various places were done with [25] an eye to getting media attention.

That incidentally does not seem to be a very powerful argument for compelling the press not to cover demonstrations.

Q I show you a copy of an editorial which appeared in the Washington Post which, as you know, is the Plaintiff's newspaper in this case. This is dated Tuesday, November 14, 1972, and in particular I refer you to the second of the two editorials which says, "To curb hijackers, improve ties with Havana."

It states, "The media must ask themselves whether, by their play-by-play reporting of the 29-hour, 4,000-mile adventure, they did not scare or embolden the hijackers to act more rashly than they otherwise might. It seems a miracle no one was killed."

My question to you is whether you agree with this statement?

A I do not. It seems to me a foolish statement. The reason it seems to me foolish is that I would find it very hard to conceive of the rather desperate men, in this desperate situation, taking time from holding guns pointed at the heads of pilots, to read the newspapers and be emboldened by the news.

[26] Q Let me ask you another question on basically the same subject.

Do you think that extensive press coverage given to, say, this particular hijacking might, in a way, encourage other persons to do the same thing?

A Well, that, too, is a familiar argument that I think various journalists answer in various ways. I see no way, frankly, to solve the problem in this country, by turning a blind eye to this situation which is where you are driving me, at this point. It is a very popular point of view, a point of view that certain unpleasant realities will disappear if we don't report their existence. I cannot accept that as an answer. This has nothing to do with this particular case, but, for example, in recent weeks and months, in New York City, where I live, there has been a great deal of attention in the press to corruption among public officials and policemen. I would find it very hard to accept the argument that the press ought not to report that kind of thing, lest we encourage more corruption. That seems to be the logic of your statement.

Q I don't necessarily agree with the analogy. Let me ask you this question:

There have been, I think, many stories written [27] about these hijackers, where considerable space was devoted to specific measures taken by the authorities to frustrate the hijackers. Now, don't you feel that this type of publicity could be detrimental, in that future hijackers could become aware of the security measures and thereby frustrate the authorities?

A That is conceivable, but as I remember it, the publicity, attendant upon—the publicity you mentioned about various measures was essentially put out by the Government to show the public what a good job it was doing in protecting them. The press merely reported

what was said by FAA or various airlines about measures that were being taken.

Q Do you know, of your personal knowledge, that that is the only source for that type of stories?

A Well, I can't vouch for every story that has been published. I read a fair number which quoted officials of the Federal Aviation Administration about this or that measure. The sky marshals were announced by the President of the United States himself.

Q But the Government, for example, did not give out specific information with respect to particular criteria which are employed in these measures which they used to determine the profile of the typical hijacker, and that sort of thing. [28] if this type of information came to the knowledge of the press, you don't believe a public service would be rendered by publishing that particular type of information?

A You are talking about information of which I am not aware, so I would rather not give you a judgment as to whether it would be in the public interest or not. I have not seen the information.

Q Are you personally familiar with the role of the media in the incident which occurred at the New York State Prison at Attica in May, 1972.

A I am fairly familiar with it. I wasn't there myself. I have talked to a fair number of journalists who were there, and prison officials who were there and to Dean McKay, and I have read his report. Yes, I am familiar in a general way with it.

Q You have read the report of the McKay Commission?

A Yes, in fact we had Dean McKay and his chief—whatever the title was, the chief legal officer of the Commission at the school, answering questions of students and faculty about the report of the whole affair.

Q This was Mr. Lyman?

A Yes.

Q Are you familiar with certain contents of the report [29] of the Attica Commission in which the role of the media, in connection with the protest which occurred there is discussed?

A In general terms, yes. I may not remember every detail. If you want to refresh my memory, please do.

Q If I may read to you from page 211 of the Bantam Books edition of the Attica Official's Report, it states:

"Prisons have traditionally been off limits to the press. The admission of newspapermen and television cameras to D yard, not only provided inmates with an unparalleled opportunity to tell the public about prison conditions, but gave them a sense of importance, dignity and power. Inmates realized that they could command national attention only as long as they kept the hostages and that, once the uprising ended, they would return to the status of forgotten men, subject to all the humiliations of prison life. That feeling, coupled with this fear of reprisals and mistrust of the State, made it almost impossible to persuade them to give up the limelight and return to anonymity."

Do you have an opinion on that statement?

A I don't have a very strong opinion about it. It seems to me one has to ask one's self, as I do: The limelight came to those people only after Attica was, so to speak, aflame.

[30] I don't see how the press could or should have been excluded, if that is what you are advocating. Once the rebellion or insurrection started, it became a rather large public event of appreciable public interest.

Q But it appears, does it not, from that fact-finding commission, that the presence and role of the media, during the disturbance, had the effect of encouraging the inmates to continue to prolong their insurrection?

A That is what they said in the report, or the passage that you read to me. I can find fault, if I may follow up, with the performance of the press at Attica, in rather different ways which may interest you.

There was a fair amount of totally misleading information published in some of the most reputable news media in the country. I mean the New York Times, for example, in the celebrated story that throats were cut.

Q This was after the disturbance was terminated?

A No, I believe it was even before the termination, but I am willing to—that I don't think has any bearing on



the point I set out to make and that point is that the press, because it lacked direct access, for the most part, to the prisoners, or that particular section of the yard where they were, was going on the say-so officials at the prison who [31] put out what turned out to be a completely inaccurate story about people having their throats cut and people being emasculated, and all the rest of it.

This was reported in good faith by papers as reliable as the New York Times, and it turned out to be a total lie.

Now that lie was not intended by the press. It was a lie put out, without the possibility of verifying it by members of the prison staff and Commissioner Oswald's staff, and I think that was a rather damaging lie and a rather dangerous lie. Now all of this may have no very direct bearing on the situation you are talking about in presumably a prison where there is no riot in progress, at least that was my impression of what is involved in this case, but it does seem to me to strengthen very greatly the argument, the need for the press to be skeptical about what is received second or third or fourth or fifth-hand from officials, as distinguished from the Department of Corrections of New York State.

Q But you do concede, do you not, that the presence of the media at Attica tended to fan the flames, so to speak?

MR. WILSON: I object to this attempt to characterize Dean Abel's testimony today.

[32] THE WITNESS: I don't recall having conceded any such thing. No, I do not concede anything. That is a rather inflammatory way to put it.

BY MR. KATZ:

Q You do not agree with the findings of the Commission?

A You inquired about the findings of the Commission earlier and I think I commented on it.

Q Do you believe it to be a duty of a newsman, receiving an unfavorable allegation against the administration of a prison, to attempt to get the other side of the story, that is, to talk to the officials in charge?

A I have already said that if I were in a situation in which I received a letter with such allegations, I would

not rush into print with that letter alone. I would go to the prison and talk to the man who wrote the letter and try to investigate, by talking to prison officials and seeing for myself, as best as I was allowed to see, what the substance of the complaint was. I would try to check it. That is what a responsible journalist does.

Q Do you know whether this practice is followed by all journalists?

A I would be a damned fool if I said that every journalist uses the highest standards of his profession, [33] just as I would be an equally damned fool if I suggested that every lawyer and every doctor in every state use the same high standards of their professions. That would be to deny malpractice, and it exists in your profession and mine and the medical profession and every other profession I can think of. The fact that certain people who are performing in those fields do not hew to the highest standards is regrettable, but it does not, it seems to me, invalidate the efforts of those who do hew to high standards and it has been my own professional belief, from the time I came to be involved in this business, that one must hew to the very highest possible standards and, as the Dean of the School, I happen to head, I can assure you that this is a very important part of teaching.

Q Would you feel there would be any circumstances in which prison officials might be justified in prohibiting personal interviews, with particular inmates?

MR. WILSON: I object on the grounds he has already testified that he has no experience in administering prisons.

MR. KATZ: You may answer.

THE WITNESS: I really don't know. I don't know enough about the range of the situations that might arise, which might seem to be, to some, to justify this sort of [34] thing. I have no doubt, for example, that if there was an insurrection in progress at a prison, that the automatic recourse of the warden or whoever was in charge would be to cut off visits by journalists and others, but, lacking any specific details of a particular case, I find it hard to answer that question.

MR. KATZ: That is all I have.

MR. WILSON: No further questions.

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(By stipulation of counsel, in the presence of the witness, reading and signature waived.)

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(Whereupon, the deposition was concluded at 12:00 o'clock Noon.)

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## [35] CERTIFICATE OF NOTARY PUBLIC

I, Eileen King, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was take by me stenographically and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

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Notary Public in and for  
the District of Columbia

My Commission Expires:  
September 1, 1977.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action 478-72

THE WASHINGTON POST COMPANY *et al.*, PLAINTIFFS,

vs.

RICARD D. KLEINIENST, Acting Attorney General  
of the United States,

and

NORMAN A. CARLSON, Director of the United States  
Bureau of Prisons, DEFENDANTS

Washington, D. C.

Wednesday, November 15, 1972

Deposition of

JOHN W. MACHACEK,

a witness, called for examination by counsel for the plaintiffs, pursuant to notice, copy of which is attached to the court copy of this deposition, at the offices of Williams, Connolly and Califano, 1000 Hill Building, 839 - 17th Street, N.W., Washington, [2] D. C., by Charles H. Wilson, Jr., Esquire, before Eileen King, a Notary Public in and for the District of Columbia, beginning at 10:00 o'clock a.m., when were present on behalf of the respective parties:

For the Plaintiffs:

WILLIAMS, CONNOLLY & CALIFANO

By: CHARLES H. WILSON, JR., ESQUIRE

1000 Hill Building

839 - 17th Street, N.W.

Washington, D. C.

For the Defendants:

MICHAEL A. KATZ, ESQUIRE

Assistant United States Attorney

United States Courthouse

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## EXHIBITS

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1. Photostatic copy of Times-Union	6
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<i>Defendants' Exhibit No.</i>	
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[3] WHEREUPON,

JOHN W. MACHACEK,

the witness, was called for examination by counsel for the plaintiffs and, having been first duly sworn by the Notary Public, was examined and testified as follows:

## EXAMINATION BY COUNSEL FOR PLAINTIFF

BY MR. WILSON:

- Q Will you state your name for the record?  
 A John W. Machacek.  
 Q Where do you reside?  
 A Rochester, New York.  
 Q At what address?  
 A 451 Woodbine Avenue.  
 Q Where are you employed?  
 A Rochester Times-Union.  
 Q In what capacity?  
 A As a news reporter.  
 Q How long have you been employed by the Rochester Times-Union?  
 A This is my sixth year.

Q Sixth? You would have joined the newspaper in 1966?

A August of 1967.

Q Did you have any previous newspaper experience, [4] before joining the Times-Union?

A Yes, I have. I previously worked for the Milwaukee Sentinel for a period of one year, 1962 to 1963, and later for the Albany Knickerbocker News from 1964 to 1967.

Q Mr. Machacek, have you received any award or prizes for your work as a journalist?

A Yes, I received the 1972 Pulitzer Prize for spot news reporting, and that was in relationship to the Attica Prison riot.

Q During the course of you news career, which spans approximately ten years, have you developed any particular specialties?

A For the Albany paper and the Rochester papers, I have covered education, ranging from the State Board of Regents in New York, down to city school districts.

Q Are there any other specialties?

A I have also covered transportation problems in Rochester, some labor news, and town government or suburban governments.

Q You mentioned that you won your Pulitzer Prize for covering the Attica Prison riots. Apart from that, have you had any other experience in covering prisons?

A No.

[5] Q Would you describe for me, if you will, the circumstances of your coverage of the Attica Prison riots, that led to the Pulitzer Prize?

A First of all, I was a co-winner of the Prize, and the other man who shared the award was Richard Cooper, also with the Rochester Times-Union staff.

He received a tip the morning following the assault at the prison, the take-over of the prison, by the State Troopers, that the hostages, the nine guard hostages—

MR. KATZ: I object to that as hearsay.



BY MR. WILSON:

Q Mr. Machacek, will you describe your role in the coverage of that story? First of all, were you at the scene?

A No, I was not at the scene.

Q Did the Rochester Times-Union have reporters at the scene at Attica?

A Yes, we had at least a dozen reporters there, around the clock.

Q Now will you summarize briefly, if you can, what it was that you had a role in reporting, that led to the Pulitzer Prize?

A I was sent by my City Editor out to the Monroe County Medical Examiner's Office to confirm a tip that Mr. Cooper had [6] regarding the cause of death of the nine guard hostages.

Cooper had received word from a civilian supervisor, within the Monroe County Medical Examiner's Office.

MR. KATZ: I object to what he was told.

(Discussion off the record.)

MR. WILSON: Will you mark this Plaintiffs' Exhibit No. 1?

(Photostatic copy of a page from "The Times-Union" dated Tuesday Evening, May 2, 1972, was marked for identification Plaintiffs' Exhibit No. 1.)

BY MR. WILSON:

Q I hand you Plaintiffs' Exhibit No. 1 for identification and ask you if you can identify it.

A This is a copy of a page from the Rochester Times-Union, with the stories describing how I won the Pulitzer Prize.

Q What is the date of that?

A The date is May 2, 1972.

Q What you hold is a photostat of two pages of that issue of the Rochester Times-Union. Is that correct?

A The photostat pages are of Page 1 and Page 10.

Q Those pages contain other stories, other than the story about the Pulitzer Prize?

[7] A Right.

Q I call your attention to a story in Columns 2 through 4 of Page 1 of Plaintiffs' Exhibit No. 1 for identification, and ask you if you can identify that, please?

A That story describes how two Times-Union reporters won the Pulitzer Prize.

Q Are you familiar with that story and its contents?

A Yes, I am.

Q Is it your recollection that that story accurately reports the circumstances under which you and Mr. Cooper won the Pulitzer Prize for spot news reporting?

A It does.

Q You were saying, before we discussed this document, that you had been assigned by the Times-Union to check out a tip. Is that correct?

A That is correct.

Q What was the substance of the tip, as it was conveyed to you, and who conveyed it to you?

A The substance of the tip—

MR. KATZ: I object to this, for the record.

BY MR. WILSON:

Q You may answer.

A The substance of the tip was that the nine guard [8] hostages had died of gunshot wounds and not slit throats, as had previously been reported by prison officials.

Q From whom did you get the tip?

A I was briefed by my City Editor, Phil Currie.

Q What did you do, after talking to Mr. Currie?

A Mr. Currie dispatched me to the Monroe County Medical Examiner's Office, where the bodies of the hostages had been brought for autopsy. His instructions to me were to stick there until I had talked directly with the Monroe County Medical Examiner, Dr. Edland, who was performing the autopsies, and my further instructions were to verify that fact or that tip, that we had received via a civilian supervisor, within Edland's office.

Q Did you, in fact, go to the hospital?

A The hospital?

Q Or the Coroner's Office?

A Yes, it was the Medical Examiner's Office.

Q You went to that office?

A Yes.

Q What did you do there?

A Once inside the Medical Examiner's Office, there was about a half hour wait, before I had a chance to see Dr. Edland. When I did see him, he had just completed more of the [9] autopsies and was taking a lunch break. I told him what we had heard and asked him to confirm that report and he did.

Q What did he tell you?

MR. KATZ: I object to this as hearsay.

THE WITNESS: I asked Dr. Edland if it was true that the hostages had died of gunshot wounds and not slit throats and he said, "Yes, that is correct". And following that, I proceeded to ask him questions as to the angle of the gunshot wounds, the caliber of the bullets and he answered to the best of his ability, at that point.

BY MR. WILSON:

Q Following your conversation with Dr. Edland, what did you do?

A I then went to a nearby phone and called my City Desk and informed them what Dr. Edland had said, and proceeded to dictate several paragraphs of direct quotations from Dr. Edland.

Q What was the significance of the information you had received from Dr. Edland, with respect to the stories being carried by the Rochester Times-Union, on this incident?

A Well, the Rochester Times-Union is an afternoon paper in Rochester, and on Monday, the day of the assault, the paper had already gone to bed and, by the time the Corrections [10] Department officials and prison officials took a group from the press on a tour of the prison, after the assault, and it was during that tour that at least two Corrections Department officials either reported verbally or by gesture, that the hostages had died of slit throats, and the following day the New York City morning newspapers carried stories to that effect, either direct quotations from the prison officials or from

State Troopers who said that they had witnessed throats being slashed, during the assault.

Q Did the Rochester Times-Union carry those stories?

A In it's earlier Tuesday morning editions, the Rochester Times-Union was carrying wire service reports of the causes of death.

Q Which were what?

A I believe they were Associated Press, and the Associated Press had attributed them to prison officials.

Q The Associated Press reports were what, with respect to how the hostages had died?

A By slit throats.

(Discussion off the record.)

(Photostatic copy of three pages from "The Times-Union", dated September 14, 1971, was marked for identification Plaintiffs' Exhibit No. 2.)

[11] BY MR. WILSON:

Q I show you Plaintiffs' Exhibit No. 2 and ask you if you can identify it?

A It is Page 1 and Page 18 of the first section of the Rochester Times-Union, dated Tuesday September 14, 1971.

MR. KATZ: For the record, I would like to enter an objection, at this point, a continuing one, with respect to the relevance of this entire matter of what went on in Attica. I believe it has no relevance to the issues in this case.

BY MR. WILSON:

Q What is the lead story on the front page of the Rochester Times-Union which is Plaintiffs' Exhibit No. 2?

A The lead story is headlined "Gunshots, Not Knives, Killed Hostages" and the lead paragraph in the story reports that autopsies show that hostages who died in police assault on the prison died of gunshot wounds and not cut throats, and that fact was reported by the Monroe County Medical Examiner's who had performed the autopsies.

Q Does that story that you have just referred to reflect the information you obtained from Dr. Edland?

A Yes, it does.

Q Did you write that story, physically sit down and type at a typewriter and write the story?

[12] A No, I did not.

Q By what process was it written?

A It was written by a re-write man who was handling reports from all of the reporters involved in the Attica coverage. Being an afternoon newspaper, with early morning deadlines, this is a normal procedure for us to follow, on breaking stories.

Q And is that the story the basis of your winning the Pulitzer Prize?

A Yes, it is.

Q Just to clarify this now, what precisely was it about that story that led to the Pulitzer Prize award to you? Let me rephrase that.

What was it about that story that stood out, in terms of coverage of the Attica riot?

A Well, it was the dramatic change of facts. Everybody from prison officials to State Troopers had been convinced, and had reported to the Press that the hostages had died of cut throats or slashed throats, and the Medical Examiner who performed the autopsies proved otherwise. It changed the whole course of the public's attitude toward the Attica situation.

Q Did other newspapers carry the reports of the autopsy?

A Yes, I believe they did because, after our story was [13] put in type in our paper, the Associated Press used those facts and wrote their own stories. As you know, the Associated Press feeds on all the rest of the papers, most of the rest of them.

Q What then was significant about your story, that led to the Pulitzer Prize?

A Excuse me?

Q Why then did your story win the Pulitzer Prize, if other papers carried the accurate story?

A Because we were the first to report it and we obtained the story several hours before Dr. Edland held his

press conference and reported to the press corps, covering the Attica riots virtually the same thing he had told us four hours earlier.

MR. KATZ: I object to the question and answer, unless he can say from personal knowledge, that he was informed that this was the reason why he received the Pulitzer Prize, from those who made the award.

BY MR. WILSON:

Q What was the category again, in which you won the Pulitzer Prize?

A The category was general spot news reporting.

Q It is true, isn't it, that there are several Pulitzer Prizes awarded for journalism each year?

A That is true.

[14] Q In several categories?

A Yes.

Q What is it that would distinguish the category in which you won the prize from other categories?

A Simply that it is reporting of a breaking news event or spot news event, under deadline pressure.

Q Did a citation, or anything in writing, go along with the prize you won?

A There was a citation.

Q Can you recall the content of that citation?

A Basically what I have just told you about, the nature of the award and the reasons for it.

Q Did that citation make any reference to the fact that your story was the first to report this piece of news?

A No.

Q It did not make reference to that fact?

A No, no.

Q But it is a category that deals with the coverage of breaking news under deadline pressure?

A Right.

Q And it recognizes the skill of reporters under those circumstances?

A That is right.

[15] Q In your ten years as working newsman, has it been your experience that the accurate and effective re-

porting of news has a critical dependency upon the opportunity for face-to-face interviews?

A Yes, it has. I can recall numerous times where face-to-face interviews have helped me build a rapport with the person I am interviewing. We were able to pursue a particular line of questioning or honing in on a particular point that we might not otherwise have received.

I can think of one particular experience when I was covering a long construction trades strike in Rochester, during the summer of 1969, and the Contractors' Association, which was very conscious of its public image, and striving hard to put forth its position before the public, had hired a public relations firm and, during the course of reporting that strike, I had dealings with the public relations man, assigned by that firm to the Contractors' Association.

Q Do you recall his name?

A Al Bruce.

Q Proceed.

A One day, he called me over the phone to say that he had an exclusive release for me, on some development in the strike, and that he wanted to come out to see me at my house [16] that night, and he did.

On inspecting the release, I saw that the contractors were charging the Plumbers' Union with failing to perform emergency work in a high rise apartment project for senior citizens. The project was partially completed and some senior citizens were living on some floors.

Q Were members of the Plumbers' Union on strike?

A Yes, they were. I did not immediately write the story. It was a Friday night, I believe, and I waited until Monday, when I spoke with an officer of the Plumbers' Union on the street, and I told him what the release contained and he was able to verify for me, during that face-to-face interview, that such was not the case, and so I did not write the story at all.

Q Was there any particular reason, in this instance, why you sought out the official of the Plumbers' Union?

A I wanted to get the other side of the story.

Q Was this unusual, in the way of your going about your job as a reporter?



A No, on strikes and anything else, the job of the reporter is to get a balanced picture of what happens, and if one side makes a charge against the other, it is our job to either get a reply or to verify it.

[17] Q You say this is a normal practice?

A Yes, it is.

Q Of the way you performed your duties?

A Yes.

Q You have described the situation in which the opportunity for face-to-face interview caused you not to publish a story that otherwise might have had a strong impact.

A That is right.

Q Have you had any experience where the opportunity for face-to-face interview would have produced some other effect?

A I am currently covering the school beat for Rochester Times-Union and recently I received a tip from a teacher that a particular school was in bad physical condition, including leaky roofs and that the leaks were so serious that, when it rained or during winter, when there was snow and ice packed up on the roof, the teachers had to bring in buckets to catch the water in the classrooms.

To follow up on that tip, I went out to—

Q Excuse me for a moment. Did you know the teacher personally, at the time you received that tip?

A No, I didn't.

Q Proceed.

[18] A To follow up on that tip, I went out to the school and met with the principal who took me on a tour of the building, and I asked him about the leaks and he said, "Yes" and he showed me where they were. He showed me other physical problems which the school had and, during that tour, I talked with two or three other teachers who also verified the problem, and then later, I talked with a parent who had a child in the school, and she painted a far worse picture than had been portrayed by the principal and the teachers.

Based on those interviews, I wrote a story, describing the problems of the school.

Q Would you have felt that you could have written a story, absent the interviews you conducted in the school incident you described?

A I couldn't have been sure, in my own mind, whether those facts were true or not, and not knowing the teacher, I just couldn't trust her description.

(Discussion off the record.)

BY MR. WILSON:

Q Mr. Machacek, I would like to read to you two sentences from the brief, filed by the Government in the Court of Appeals in this particular case, and after I read these two sentences, I would like to ask you some questions based on [19] them.

These two sentences appear on pages 25 and 26 of the typewritten brief, filed by the Government in the Court of Appeals in this case. They read as follows:

"The lack of any 'abridgement' of 'the freedom of the press' is underscored by the fact that the Bureau has carefully provided for a comprehensive system of reasonable alternatives under which the press has full opportunity to inspect prisons and to learn about and report on prison conditions and prisoners' grievances. Thus, under the Bureau's Policy Statement, press representatives may visit, inspect and photograph federal prisons; inmates are permitted to directly inform press representatives of prison conditions and prisoners' grievances through sealed, uninspected mail written and delivered promptly to any press representative; press representatives are permitted to initiate correspondence with particular inmates or to follow-up on mail received from inmates by writing to particular inmates in letters which are inspected only for contraband or matters inciting illegal action; and prison officials are required to 'give all possible assistance' to press representatives [20] 'in providing background and a specific report' on inmate complaints."

My question to you is this: If you were assigned by your City Editor to do a story on prison conditions or prisoners' grievances and those were the sources of information available to you, do you feel, based on your experiences as a reporter, you would be able to develop a fair and accurate account of prison conditions and prisoners' grievances?

MR. KATZ: I wish to enter an objection to the question. It is hypothetical. There has been no testimony given by the witness that he has actually conducted prison interviews, either at the Bureau of Prisons or elsewhere, or had any actual experience along these precise lines.

MR. WILSON: Your objection is noted.

THE WITNESS: I don't think I could. I would really feel that I had not achieved the complete story or gotten the whole story.

MR. WILSON: I assume your objection will follow through all these questions.

MR. KATZ: I would like a continuing objection.

BY MR. WILSON:

Q Why is that?

A If I were to do a story on prisoners' grievances, [21] I think I would want to talk to the individual prisoners in person, first of all to find out exactly what they mean by their grievances, but further to corroborate their report with other prisoners. It might be that that particular prisoner's grievances are not a prison-wide problem, and also, in talking with other prisoners, it is very possible to get leads on other problems that are occurring.

Q You are basing this answer on your ten years of experience as a working newsman. Is that correct?

A Yes.

Q Do you have any reason to think that circumstances under which you would develop a story relating to prisoners' grievances would be any different than stories you have covered—that you cover in your normal days work?

A I don't think so.

**Q** Why would not communications by correspondence with inmates be adequate to do the story, this hypothetical story that the City Editor assigned to you?

**A** First of all, there would be a time lag, in writing the questions and mailing them and then receiving the answer back, and if there were an actual face-to-face interview, you would be able to interrupt the answers in much the same way a lawyer does in a courtroom, to get into a particular point and [22] clarify it, or elaborate on certain points, and this just couldn't be done with any effectiveness, in correspondence.

**Q** Would it be relevant to you, whether you knew the inmate personally and not in terms of dealing by correspondence with him?

**A** That would probably help, but I still wouldn't be satisfied.

**Q** You are saying: even if you knew the inmate personally—

**A** I would still want to talk to him.

**Q** A face-to-face confrontation?

**A** Yes.

**Q** Why would not information, provided by prison officials, be adequate to write such a story?

**A** I think our experience at Attica is proof of that. Even after the Medical Examiner had reported his findings, a prison official, Corrections Department official, tried to find ways to dispute that finding.

**MR. KATZ:** I object to that.

**MR. WILSON:** On what grounds?

**MR. KATZ:** It is hearsay and characterization on the part of the witness.

[23] **BY MR. WILSON:**

**Q** You said that Corrections officials at Attica Prison continued to deny the reports on your story, even after the Coroner's report was available? On what do you base that statement?

**A** I believe those facts were reported by the McKay Commission, appointed by Governor Rockefeller, to make a complete investigation.

**Q** Have you read that report?

A I have read parts of it.

Q Which parts have you read?

A The parts concerning the assault and the aftermath.

MR. WILSON: I have no further questions.

# EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MR. KATZ:

Q So the record may be clear on this, you have never actually visited a prison?

A No.

Q You have never conducted an interview with an inmate of a prison?

A No.

Q Do you know if the newspaper by which you are employed has circulation within prisons—being sent into prisons?

[24] A I believe so.

Q Your only role in connection with the reportage of the Attica matter was related to your story in which you interviewed the Medical Examiner?

A Yes.

Q You are aware, are you not, that prisons are not open to the general public at large?

A I believe so.

Q Do you feel, as a newsman, that you should be permitted to have entry to such areas of the prison where the general public is not permitted to enter?

A Well, a prison is a public institution, although a limited-access public institution, and if there are problems or issues which affect the public, or which should be in the public interest to know, then I think that the press does have a right to enter the prison and investigate those problems.

Q Would you feel that there are any legitimate grounds or particular circumstances which would justify limiting your access to prisons or to interviewing inmates at any particular time?

MR. WILSON: I object to that question.

BY MR. KATZ:

Q You may answer.

[25] A Are you talking just about prisoner interviews, or all situations?

Q Take one step at a time. Let's say access to a penal institution generally, first.

A Could you rephrase the question, or repeat the question?

Q I will rephrase the question.

Would you acknowledge that there might be circumstances under which those in charge of a prison might be justified in prohibiting newspapers access to an institution at a particular time?

MR. WILSON: I will make a continuing objection.

THE WITNESS: There might be, but I think, even in the most extreme case, such as a prison riot, that the fact there was no—there was not even a press pool allowed inside the prison, during the assault, or even during the talks between the prison officials and the inmates led to the confusion in the aftermath of the assault. The public was simply not getting a balanced or a complete picture of what was happening inside that prison yard. The only reports that were being published at that time, were reports from prison officials, State Troopers and observers who had been inside the prison yard and the complete story, the mood of the place, was not captured by the [26] press. That is important in any story.

Q Have you ever requested an interview with an inmate at the penal institution?

A No, I haven't.

Q Do you have an opinion, respecting whether attention or coverage, given by the media to the activities of certain events or individuals, can ever influence, in any way, the outcome of those events?

MR. WILSON: I object. Objection.

THE WITNESS: It is possible, but I think that, by and large, the course of events is pretty well set or happens, as a situation develops.

BY MR. KATZ:

Q Has it ever been your experience that newspaper publicity, given to an individual, particularly a militant type of person, tends to magnify the importance of that individual in the community?

A Well, when I personally have seen such a case, or am covering such an individual, I take that into account and I try to put that individual in proper prospective.

I think one example offhand—there was a young black militant type in Rochester who had formed his own organization in the inner city, and he suddenly started attacking the city [27] school system, particularly schools in his area, and he would call me, at the drop of a hat, to say that he was going to hold a press conference and slam the principal of the school and ask that the white principal be removed and a black put in his place.

At one point, he told me he had the backing of a Council of black professionals who work in the community. On checking that out, I found that he didn't have such backing, and I simply ignored him after that, didn't go to his press conferences. If he did have something which checked out, it didn't receive much coverage.

Q Well, if we were to have the case of such an individual, whose activities were not covered by newspapers as circumspect as yours, in reporting his activities, do you feel that there is a possibility his influence could be greatly exaggerated?

MR. WILSON: Objection.

THE WITNESS: Yes, I would have to say so.

(Discussion off the record.)

MR. KATZ: I would like to have marked as Defendants' Exhibit No. 1, this editorial from the Washington Post of Tuesday November 14, 1972.

[28] (Editorial from The Washington Post, dated November 14, 1972 was marked for identification Defendants' Exhibit No. 1.)



BY MR. KATZ:

Q I would like to show you what has been marked as Defendants' Exhibit No. 1 for identification, and I direct your attention to the lower of the two editorials, on the subject, "To Curb Hijackers, Improve Ties With Havana" and this particular statement.

"The media must ask themselves whether, by their play-by-play reporting of the 29-hour, 4,000-mile adventure, they did not scare or embolden the hijackers to act more rashly than they otherwise might. It seems a miracle no one was killed."

My question to you is whether or not you agree with that statement?

A I think, that in the area of airplane hijacking, the press does have to evaluate how it has been covering them and see whether such coverage has had an effect on the actions of hijackers or has lead to further hijacking.

Q Do you feel that the same observations expressed in this editorial might apply equally to the Attica riots or militant prison inmates?

[29] MR. WILSON: I object. My objection is based on the same basis as your objection to one of my hypotheticals, on the ground that he has not had this experience.

THE WITNESS: Well it might, but the press has to employ the same safeguards in covering prisons as it would a hijacking. It has to constantly keep checking itself as to whether it is acting responsibly or not, but that is not to say that the press shouldn't be covering either event.

MR. KATZ: Thank you. I have no further questions.

MR. WILSON: I have just a couple.

FURTHER EXAMINATION BY COUNSEL  
FOR PLAINTIFFS

BY MR. WILSON:

Q Calling your attention to Defendants' Exhibit No. 1 for identification, the question asked by the Post is whether the media did not scare or embolden the hijackers to act more rashly than they otherwise might.

Now you answered, if I recall, that that might be the case. Is that correct?

A Yes.

Q Is that based on any knowledge that you had that the hijackers, referred to in that sentence, were aware of or had heard or seen press reports of their activities?

A No.

[30] Q Do you know whether the hijackers involved in this particular hijacking had heard the press reports or read press reports of their activities?

A I don't know that.

Q Mr. Katz asked you, and I am paraphrasing, but I think it is accurate, whether the course of the events could be influenced by the news coverage of those events and part of your response was that it was possible. What did you mean by that? It was a general question. What did you have in mind by your answer "it is possible"?

A Well, I guess I was thinking of my own experience in covering the school's racial troubles. It seems that no matter how hard we try to present a responsible and balanced and unemotional report, that there are some people—I would say a few people on both sides—who read things into those news stories that aren't there, and they are reading things there according to their own—based on their own prejudices—and as a result, they might make public statements, based on those understandings.

Q Was this what you had in mind, when you said, "It is possible"?

A Yes.

Q Was the word "possible" used with some deliberation, [31] or is it a certainty to you?

A No, I wouldn't say it is a certainty. I said "possibly" because an irresponsible press might generate that type of reaction to that type of event.

MR. WILSON: I have no further questions.

MR. KATZ: I have one further question.

### FURTHER EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MR. KATZ:

Q Assuming the existence of a policy, under which you could, No. 1, freely visit a penal institution and cover all areas, tour all areas of the institution, talk to inmates of the institution whom you encountered, in the course of such a tour, and together with that, have free and unlimited written correspondence between yourself and the inmates, do you feel that, under those circumstances, you would be able to still do a reasonably sufficient job of covering that institution?

MR. WILSON: I object to the form of the question. My assumption may be wrong but I assume you are trying to characterize the present situation at the Bureau of Prisons policy.

MR. KATZ: That is correct.

MR. WILSON: Talking to inmates—the meaning of the term "talk to inmates", as you know, is a matter of contention. [32] What it means—I don't think Mr. Machacek would be familiar with that.

Secondly, my objection goes to the free and uninhibited correspondence. That is a mischaracterization of the nature of the correspondence.

MR. KATZ: Well, we are not in agreement on that particular question.

I would like to have the witness answer the question.

THE WITNESS: Are you saying that I would have access to all prisoners or ones that I would pick out?

BY MR. KATZ:

Q Those prisoners whom you would happen to encounter by chance, during the course of a visit to the institution.

A And not necessarily the ones who may have—

Q Not necessarily the ones that you could select, that you particularly wanted to see.

A Or ones that had corresponded with me as to particular grievances?

Q No.

A No, I don't think we could report a balanced story. First of all, you just wouldn't be seeing the prisoners who had the grievances, and you couldn't follow up on those reports, by checking them with other prisoners or going to prison [33] officials.

Q I would assume, under the policy, that you would be allowed to go to prison officials.

A But not to other prisoners?

Q Not to specified prisoners.

A What I am getting at is that by talking to one particular prisoner, which a reporter has in mind, he can take the reports or the grievances of that prisoner, and go to other people with it, within the prison, whom that prisoner might say could verify those stories.

Q But you could verify those stories by writing to other prisoners, could you not?

A But it would take longer and again, in the course of writing out questions and receiving answer back, the answers may not be sufficient, and you could not immediately clarify or elaborate.

Q Is immediately always a requirement? There are feature stories and there are breaking stories, are there not?

A Well, in covering as detailed and complicated a story as the prison, it might take one or two or three months or maybe longer, if it was done by correspondence, any maybe that same situation wouldn't exist, two or three months hence.

Q Well, if it was your purpose to write a feature [34] story on the prison, it would no doubt take you some time, researching such a story anyway, would it not?

A Well, I would think that, with a visit to the prison, it might take a matter of a few days, if not less.

Q But you would not consider the type of policy I have described to you as amounting to a news blackout, with respect to the prison concerned, would you?

MR. WILSON: Objection.

THE WITNESS: Well, maybe not a complete blackout, but certainly it has an inhibiting effect on providing a complete and comprehensive story.

MR. KATZ: That is all I have.

MR. WILSON: I have just a couple.

#### FURTHER EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. WILSON:

Q Mr. Katz asked you about the development of a feature story.

A Yes.

Q Is there a different process that goes into the development of a feature story, as opposed to any news story? Are they different?

A Yes, they are different. They are different types of stories. A feature story, I would characterize as in the [35] instance of a prison, as what their educational training program was like, a general overview of what kind of classroom facilities and workshop facilities were available to the prisoners, but that is different from a hard news story which might be on prisoners' grievances.

Q Are the techniques that you would employ different, depending on whether the story was hard news versus a feature.

A Feature news is less difficult to get. There is not as much digging required, whereas if you were investigating a prisoner's grievance, it would require more skill and investigation, interviewing people; you would be probing them more than you would in writing a feature story.

Q Is there a difference in the timeliness factor in a feature versus a hard news story, a story on a prisons' educational facilities, for instance, versus grievances?

A I would think so. A feature story on a training program could probably hold for weeks or maybe a month, but if a prisoner had grievances about something that was happening to him that particular day or in the past, then that is in the nature of a hard news story, much in the same fashion as a slum landlord evicting a tenant because he had refused to pay the rent.

Q Is it your testimony that, in the development of [36] hard news, relating to prisoners' grievances, a fair and accurate story on that has a critical dependence on the opportunity to visit and obtain interviews?

A Yes.

Q Is the opportunity for face-to-face interviews unimportant in a feature story?

A No, I would say that it is equally as important, in the sense, that to do a good job, a good, accurate descriptive report, you have to see the program in operation.

#### FURTHER EXAMINATION BY COUNSEL FOR DEFENDANTS

BY MR. KATZ:

Q Do you feel that every alleged prisoner grievance, regardless of nature, is something that calls for immediate action on your part?

A Well, if I were a reporter, assigned to covering prisons, I would certainly check out every grievance, and I would want to do it as fast as possible.

MR. KATZ: That is all.

MR. WILSON: Will you waive signature?

THE WITNESS: Yes, I will.

(By stipulation between counsel, and in the presence of the witness, reading and signature waived.)

**[37] CERTIFICATE OF NOTARY PUBLIC**

I, Eileen King, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me stenographically and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

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Notary Public in and for  
the District of Columbia

**My Commission Expires:**

**September 1, 1977.**



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Civil Action No. 467-72

**WASHINGTON POST CO., ET AL., PLAINTIFFS,**

-vs-

**RICHARD KLEINDIENST, ET AL., DEFENDANTS.**

The deposition of **PETER B. BENSINGER**, called by the Plaintiff for examination, pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before **TERRY KUPPERMAN**, a Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, at Suite 400, 160 North LaSalle Street, Chicago, Illinois, on the 8th day of November, A.D., 1972, commencing at 4:00 o'clock p.m.

**PRESENT:**

**MESSRS. WILLIAMS, CONNOLLY & CALIFANO,**  
(1000 Hill Building, Washington, D.C. 20006), by:

**MR. RICHARD M. COOPER,**  
Appearing on behalf of the Plaintiffs;

**MR. MICHAEL A. KATZ,**  
Assistant United States Attorney,  
(United States Courthouse,  
Washington, D. C. 20001),

Appearing on behalf of the Defendants.

**I N D E X**

<b>Witness</b>	<b>Direct</b>	<b>Cross</b>	<b>Redirect</b>	<b>Recross</b>
<b>PETER B. BENSINGER</b>				
By Mr. Cooper	P.8		P.70	
By Mr. Katz		P.58		P.74
<b>Exhibits</b>			<b>Marked for Identification</b>	
<b>BENSINGER DEP. EXH. NO. 1</b>			<b>P. 7</b>	
<b>BENSINGER DEP. EXH. NO. 2</b>			<b>P.41</b>	

[3] (The witness was duly sworn.)

MR. COOPER: Let the record show that this deposition is being taken pursuant to notice and that Assistant United States Attorney Michael Katz is here to represent the Defendants, and I am here to represent the Plaintiffs.

PETER B. BENSINGER,

called as a witness by the Plaintiffs, having first been duly sworn, was examined and testified as follows:

### DIRECT EXAMINATION

BY MR. COOPER:

Q Would you state your name and address, please, for the record?

A Peter B. Bensinger, Director of Corrections for the State of Illinois. My official business headquarters is 201 State Armory, Springfield.

Q Mr. Bensinger, would you state briefly your educational background?

A My educational background consists of a college degree, Liberal Arts, from Yale University in 1958. I went to the Phillips Exeter Academy before that.

[4] Q Did your position as Director of Corrections make you the chief executive officer for the Illinois correctional system?

A Yes.

Q How long have you held that position?

A Since January 1, 1970.

Q Would you describe briefly, for the record, please, the Illinois correctional system?

A The Illinois Department of Corrections is the state agency responsible for the institutional care and after care of all offenders committed from juvenile and criminal courts of the State of Illinois. It is an agency with four adult correctional penitentiaries or institutions: A State Reformatory for Women, and a State Farm for misdemeanants. In addition to those facilities, we have approximately 30 different juvenile schools or camps or

adult work release centers or halfway houses, employing approximately 5,000 employees and dealing with approximately 15,000 offenders, either in institutions or on parole.

Q Can you give us a rough estimate of the average daily population of your adult facilities?

A Yes. The average daily population of the [5] six adult institutions at this point in time would be 6250 inmates.

Q And what is the range of offenses represented in those institutions; for what offenses are people sentenced to those institutions?

A Most of those are sentenced for burglary, robbery. But there are a number of individuals—somewhere in the neighborhood of 700—who are committed for murder, manslaughter, as another group; there are some narcotics offenders that are committed for the sale of narcotics.

There are other crimes of rape and violence.

I would think it would be a normal type of state correctional agency that receives offenders that gets something more than probation or a misdemeanor offense.

Q Now, as Director, are you in regular contact with the officials who administer these institutions?

A Yes. We do have an Assistant Director as well in charge of adult corrections, who, with me, is a state officer, who has specific statutory responsibility over adult correction. But I am in touch with the institution administrators as well.

[6] Q Do you at the present time have a position with the Association of State Correctional Administrators?

A Yes, I am President of that association.

Q Would you describe for the record what the association is and what it does?

A The Association of State Correctional Administration is an association of agency heads from each of the 50 different states in the United States who have responsibility for adult corrections. It is an association that also includes representation from the Federal Bureau of Prisons, the Canadian penitentiary system, and the three largest metropolitan area jail or correctional complexes

that operate independently from the state systems—New York, Philadelphia, and Chicago.

And the association—a relatively new association, has as its objective to further the interpretations and improvement of correctional policies and practices, and it has been meeting since mid-1960's. Lately, we have been addressing ourselves to guidelines, issues involving more national focus of legislation and attention.

Q Do you keep in touch through the ASCA and [7] in other ways with developments in penal systems elsewhere in the United States?

A Yes, we do. We have a correctional memo newsletter that is issued quarterly, and we do have meetings. In the last year, we have had three. So we do meet every so often as a body. In fact, we are meeting on November 18th.

Q And do you personally keep abreast of developments elsewhere?

A As best I can. I think this is a very fast-moving field, so there is a lot to keep track of.

MR. COOPER: Would you mark this as Bensinger Deposition Exhibit 1.

(WHEREUPON, said document was marked Bensinger Deposition Exhibit No. 1, for identification, as of 11/8/72.)

BY MR. COOPER:

Q Mr. Bensinger, I show you Deposition Exhibit 1 to this deposition and ask you if you can identify this document?

A Yes, I can. It is our Section No. 011 of Administrative Regulations for the State of Illinois, Department of Corrections, issued effective April 3, [8] 1972, with respect to news media visits and interviews.

Q And does this document reflect the current policy of the Illinois correctional systems with respect to the interviews between the members of the press and the inmates in your jurisdiction?

A Yes, it is our policy. Yes, it does.

MR. KATZ: I am sorry. Could you repeat what the date was this became effective?

THE WITNESS: April 3, 1972.

The answer to that question is yes.

BY MR. COOPER:

Q What was the policy prior to the effective date of this document?

A Well, I think the answer to that question was that we did not have a uniform policy or a stated policy on a number of areas that were of interest to correctional administrators and to our own agency, and certainly news media visits and interviews was just one of a whole scope of 160 or so different points of interest that we did want to make a clear statement of policy on. The only prior review that I could determine that Illinois embarked upon was about a decade ago, when an [9] institutional rule book was developed in the late 1950's, and published in the early 1960's.

Q What was the deliberative process or the consultative process that led to the promulgation of this policy?

A We initially identified a number of subject areas that we felt the Department should address itself to in terms of policy. We consulted with our technical advisers, the Illinois Attorney General's office, case law, our wardens and superintendents. At the same time, moving through the legislature was a proposed unified Code of corrections, which was subsequently acted upon in 1972.

Q And the "we" that you referred to, referred to who? Who are they?

A Well, it was Assistant Director Monihan (phonetic) and myself and my office represented by Mr. Charles Rowe as well as the Project Director of—this will be a long name—the Council on the Diagnosis and Evaluation of Criminal Defendants, a Mr. Robert Kent Scott, who was Project Director of the Unified Code of Corrections, which I referred to earlier.

Basically, Mr. Rowe, who works in our office, [10] a Mr. Scott who works—who is an attorney and who has been working principally on the Code, and our Technical

Advisers developed a number of draft uniform regulations which we subsequently reviewed.

Q And this particular policy reflected in Exhibit 1 was the product of consultations with the various people you mentioned, is that correct?

A Yes, it was.

Q Now, I direct your attention to Paragraph 3 of Exhibit 1, and I would like to ask you about certain passages in that paragraph.

The paragraph—correct me if I am wrong—lists a number of factors that chief administrative officers are to take into account before deciding whether to grant an interview between an inmate and a member of the press.

What is meant by—I quote—"The effects such an interview would have on the inmate and his personal mental attitude"?

A There are some instances where an inmate may have had a personal family relationship that got shattered or someone—something that he did or something that someone else did to a member of his family or an event that could have transpired [11] outside of the institution, that the discussion of which would have created emotional problems for him, possibly acting out behavior as a result of the interview. That would be my interpretation of that phrase.

It was not meant to be definitive in the sense that we would be limiting the institution warden or superintendent to any specific statements or condition of facts, but rather said to the superintendent, we believe you have some responsibilities and some considerations to take into effect before deciding to grant the interview. And amongst those considerations are effects this might have in causing acting out behavior on the part of inmates.

Q So the concern, here, are you saying, is the psychological well-being of the inmate with whom the interview was requested?

A I think that is certainly—would be considered to be included in that phrase.

Q To your knowledge, have interviews been denied on this ground under your policy?

A I don't have specific knowledge of that having taken place. But I might not always be informed, because the policy is one that is mandated [12] as discretionary with the individual superintendents.

Q What is meant by the phrase "the effects an interview would have on other inmates"? What considerations of this sort would lead to the denial of an interview under your policy?

A I would think if you had a confrontation of different groups, whether it would be opposing, let's say gang-type groups of inmates, and you interviewed one individual, and this interview was given some notoriety and the other individual's point of view was not able to be put forth, it could bring a lot of pressure on those type of inmates or that individual. You might also have to face a situation as a superintendent or warden, where you have a very tense problematical situation in the institution, the granting of an interview might be such that it would promote, if not a disturbance, additional tension that would be detrimental to the safety and security of the institution. But I would think the basic reason for the phrase would be on the former.

Q That would be a situation where there is hostility between groups of inmates?

A Yes.

[13] Q And when you say to "protect the security of the institutions," what kind of standards are you thinking of in that situation? What kind of threat must be there?

A We are in a field that is imprecise at best. What we are talking about is predictability of the attitudes in the events that might take place in a correctional institution, housing thousands of men, under the best of conditions, at normal circumstances. And what we are saying—and I think our wardens and superintendents do have this feeling—they tend to be able to feel the pulse of an institution, and when an interview with an inmate that would receive notoriety or publicity or just the granting of the interview itself cause some special attention, it could, number one, call a deadline to mind as a certain date that certain things has to be done on the



part of the staff, or make specific reference to some things that members of the inmate body or the staff may or may not have done, or it could make threats to members of outside interest groups that could be part of a problem that might result in a disturbance at the institution.

And I don't mean to give you too wide of [14] a variety of answers, but I am trying to convey to you that under some cases and under certain conditions, the granting of an interview might disrupt the safety of the institution.

**Q** Just one more question on that: Can you articulate a degree of danger or a level of probability that would be required for an interview to be denied under this standard?

**A** Let me give you an example: Say someone were in what we call administrative segregation and acting out in terms of their behavior. I think the conditions—in some cases—notoriety that that incident would give would tend to reinforce the inmates' behavior of acting out.

In other words, if there was an established grievance procedure, and the inmates did have access to courts and attorneys and access to my office through uncensored and unopened letters and still they felt additional pressures or notoriety could be gained by disrupting the institution, by throwing feces or breaking up part of the individual cell arrangements, the beds, the linen, just to call attention to their problems, it would be, I think, subverting the normal administrative procedures for [15] adjustment, and I think it would probably prolong and cause unnecessary tension. And I think many times the inmates might not be tempted to do that if they didn't feel that somebody out there would—would cause extra pressure on the institution.

So, I think sometimes instead of working positively on the inmates' behalf, it works negatively.

**Q** Well, there you have an existing behavioral problem, a pre-existing behavioral problem going on.

Could an interview be denied under this language if a superintendent feels he just doesn't want to take any

chances, although there has been no past record of behavior problems with a particular inmate?

A Let me see if I understand your question. You are saying, would it be likely for a superintendent or warden to deny an inmate an interview based on no past problems or behavior?

Q But simply on a vague prediction as to the future that there might be a problem somewhere in the future?

A It is possible.

Q Would that be consistent with the policy, [16] or does the policy require him to think in terms of some probabilities?

A I think the policy is meant to encourage communications between public and our correctional inmates and institutions and employees. And unless there were some problems in which the superintendent had some grounds on which he felt we shouldn't grant this interview, it would probably be granted. It is an individual case decision on the part of the superintendent.

What you said to me is—let's take a given inmate who has what you are implying, a good behavior record, would he be denied an interview, and under those conditions, I would say probably not.

Q So then you are saying that the policy requires some grounds for—or some definite reason to think that there would be a problem if the interview was granted?

A It says with respect to request for interviews that at all times the agreement of the inmate and inmates' attorney will be necessary, and then it says that the chief administrative officer, the warden, prior to deciding to grant such an interview [17] will have to take into consideration certain situations which we call to the warden's attention.

Now, if those situations are not present, then, our policy would be to say that the warden, you know, maybe he has a reason of his own, and if he feels the interest of the institution and department will be adversely affected, he can still deny it. But I would say that would be an exception.

Q And the exception would have to be supported by—he would have to give some reasons why he thinks there would be a problem?

A I would think so. He would have to say why.

Q To go on, what is meant by the phrase: "The effect an interview would have on any pending review by the Parole and Pardon Board"?

A Well, for example, where an inmate has a very high level of visibility, this is a person who has committed, let's say, a famous crime, an infamous crime, he may not want to be interviewed, because he is up for parole next year, and he doesn't want the victims or the public reminded that 20 years ago or 15 years ago this was that famous case. So I do think, we, you know—

[18] Q But does consent of the inmate and his attorney satisfy this aspect of your policy?

A Well, it doesn't because it says that the chief administrative office should consider that as well, and that would be the reason it was stated.

Q I see. And finally, what is meant by the phrase: "The interests of the institution and Department"?

A I think we talked a little bit about that in my prior reply when you inquired as to whether a person in a general population without any prior record of problems in terms of behavior would be, let's say, denied an interview. There might be someone who is directly connected with a power group either in or outside of the institution that might, through the course of an interview, stimulate action on the outside to demonstrate, or on the inside to demonstrate, and in the interests of avoiding disturbances and demonstrations or riot-producing conditions or escapes, you might find a superintendent or warden saying, "Look, we know about this man. He has a great deal of influence with this group, and we don't want to encourage this [19] type of a force."

Sometimes—and this was true in California when I talked with Ray Procunies, who is the Director out there in their system. They felt that a number of times they had a lot of demonstrations outside their institutions, and some of the provocations outside encouraged the inmates to have some problem inside, and he feels that sometimes the pressures outside sometimes are counter-productive, even though they are phrased in perhaps different terms.

If you could strike that. I don't think I explained that whole sentence properly where I said that phrased in different terms.

Q But you don't think that the dangers or the risks from outside pressure are sufficient to cut off all interviews between inmates and members of the press?

A No.

Q Are the interviews contemplated in your policy confidential interviews with individual inmates that are conducted outside the hearing of the prison staff members, is that the kind of interview you mean?

[20] A It would generally be that nature, although we didn't state in our administrative regulations that they must be confidential private interviews. In the case of some individual offenders, it may have a maximum security classification, and we may require the presence of an officer.

Q Would that be to overhear what was said or for some other purposes?

A I would say less to overhear what is said and more to prevent the passing of contraband or the movement or exchange of illegal materials or possible violence, attempts to escape or disrupt or to take a hostage, in that case.

Usually visits are supervised.

Sometimes that supervision takes the form of an officer staying outside of a private room and looking through or being inside, and it will vary by the institution and its physical limitations and services available, by the inmates, by his classification, and the availability of his staff.

Q But in general, does the correctional staff have an interest in hearing what is said between the inmates and the reporter? I mean, do you try—do you consider that a purpose that you should pursue?

[21] A Well, we have had an interview program at Pontiac called "Issues Unlimited." And the staff is present when members of the press come in and participate in interviews, and it is helpful and it is viewed in a variety of interpretations that are given.

Our "Issues Unlimited" is a radio program which is aired live, and sometimes a columnist will go in and

write about it, but those are always held in the presence of a member of staff.

Q If a reporter and an inmate jointly request that their interview be outside of the hearing of any staff member, would that be permissible under your policy?

A With the approval of the superintendent, it would certainly be allowed. It wouldn't be prohibited unless, as I indicated, there were reasons of security, classification or space. It is not always possible.

Like Joliet-Statesville, we have a lot of inmates and we have a Parole Board that meets twice a week, all week, two out of the four weeks. So there is sometimes just not enough hearing rooms available, and the space may be a limitation, too.

[22] Q But there is no affirmative policy of discouraging confidentiality, is there, in interviews between inmates and members of the press, is that right?

A We do not have a policy—we have not mandated that you cannot have an interview between an inmate and a visitor who is a member of the news media outside of the hearing of the staff member; that is not part of our policy.

Q Now, can you describe generally the types of facilities in which interviews between members of the press and inmates can take place?

A Yes. And they vary. As I indicated—again, we are talking about adult correction, and we are talking about males?

Q Yes.

A And we are talking about felons?

Q Yes.

A Okay. We have in our minimum security in Vienna—spelled Vienna—a minimum security facility, and interviews could be conducted in what we would consider to be informal lounge-type of an area with small tables and chairs and probably a member of the media and an inmate—if it was an unsuper- [23] vised visit, which it would most likely be at Vienna. You would set at a table and chair in a large room and there would probably be some other people in there in that situation. It is a very informal, unstructured interview.

At Pontiac, which is a maximum security institution, housing about 900 men, an interview most likely would be in a room that would be available off the main visiting room used by, sometimes, visiting attorneys, and for special purposes, special programs. It is a type of confidential room.

It has glass which could be seen through and it has a door and it has four walls. It is not very large.

Q In the ordinary course, nobody else would be there except the inmate and the newsman in the room?

A At Pontiac, we have had interviews with members of staff present with inmates as well as with the newsmen. It would be possible for the interview to take place without a member of staff right in the room, possibly right outside.

I would say the more likely actual practice probably would be in a more informal discussion. [24] We haven't had a lot of interviews with members of staff and inmates specifically to really discuss a particular problem or a program or a need without the involvement of staff.

They have tried to work together so that the staff has been present, but under such circumstances there probably have been interviews that have been held where inmates have talked right with a newsman right in that private room.

At Joliet there are also private visiting rooms available for the Parole Board to use. Interviews could be held in those rooms if they are available and the Parole Board is not using them. We haven't had a tremendous demand or use of the type of interview that you are suggesting, but they have been held, and I think they have been held really—under this administrative policy—without any directions from our office—you must have newsmen interviewing in this room with these people present or these people not present.

Q So your policy is quite flexible in this respect?

A It's a rather unstructured—yes. It is a flexible policy geared to meet the individual situation [25] and the individual inmate.

Q Does your policy contemplate any restrictions on the subject matter of interviews or mandate any restric-

tions? Are there certain things that can't be talked about?

A It doesn't state that, and the policy does not indicate—our administrative personnel do not indicate to inmates that you cannot talk about this before you interview. Hopefully, any issues that the inmate may bring up that the interviewee—the news media man may have some questions which he will review with the warden and the superintendent, and we ask them to.

Q But there is nothing in the policy to restrict what an inmate can bring up initially?

A No.

Q Who makes the initial decision whether to permit an interview in the ordinary course?

A The warden or superintendent.

Q And do you review those decisions regularly or ever?

A I don't review the decisions unless for some reason or other they are brought to my attention or to the Assistant Director, Monihan. We have had [26] an instance where we have not allowed interviews for specific inmates at certain points in time and by specific reporters.

Q And have they been subject to your review?

A I have been advised of them, and I have confirmed those decisions by the superintendents and the wardens.

Q What were the grounds for the denials in those cases?

A Well, in this one case, it was following an incident in which we had—this took place July 3rd, I believe, at Joliet-Statesville, where we had four or five officers injured by an inmate—two inmates with baseball bats, and hurt these officers pretty badly. It was on a Sunday morning, and there was a general confusion in the yard following this disturbance which took place about 10:30.

We were able to resolve this situation without using firearms or mace. We did have both available. But the inmates—and there were just a few of them. As I indicated, two that initially caused this, but then there was a great confusion in the yard.



The decision was made to go into a general [27] lockup in the institution and have a shakedown. The next morning a member of the press along with members of the clergy, specific people that wanted to come down, showed up without notice at 7:00 a.m. demanding to see certain inmates. And this was within less than 24 hours after this emergency, and we still hadn't completed our investigation and tensions were running very high between staff and inmates, and we did not grant an interview from the gentlemen of the press who showed up.

Q Under your policy, would the interview have been permissible sometime thereafter?

A Depending on the option of the warden and superintendent.

Q As to what his opinion on what?

A On whether in his opinion, whether that would have been detrimental to the safety and security of the institution; whether it might have jeopardized any case we had pending with the Court of Will County, in this case, for criminal charges for the individuals that were involved in the baseball incident; whether they made unnecessary allegations and brought undue pressure on inmates or staff; that while the inmates would have been locked up, it would have caused us [28] innumerable other problems.

Q How about after the institution returned to normal, apart from the criminal cases?

A We were back to the normal operation of the institution about seven days later. I believe on the 9th. And we had no specific request for an interview from this same source.

Whether we would have granted it or not, probably would have depended upon who would have been involved or whether they would have had implications arising out of that disturbance either directly with Will County prosecution or prejudicing our own internal investigation and possibly the attitudes that other inmates and staff would have had with respect to the granting of that interview, but it is a hypothetical question.

Q What information is available to your wardens in making decisions on whether to grant interviews?

A Well, each inmate has a file or a jacket that has certain basic factual information, not only relating to the individual inmate's age and health and background, vocational education, prior criminal history, psychological testing, disciplinary [29] records, any psychiatric reports, any loss or denials of parole, the scheduling for the next parole date—it is a pretty full file, and it gives the warden, I think, an opportunity to have a pretty good insight into what this man is like in the institution and what he has been like out of the institution.

Q And do you feel that on the basis of the information available to the warden, he can make decisions on requests for interviews which both implement the spirit of your policy and protect institutional interests?

A I think our policy, based on the number of facilities we have, can do that, yes.

Q And on the basis of the information available to the wardens, can they identify the potential troublemakers, the people who, if given an opportunity to have interviews, might abuse the results of it, whatever would be the effect of it?

A Yes. The only thing—possibly in the initial reception and diagnostic processes, we might not grant an interview which an inmate just received to get a chance to know more about him, and we did deny an interview at the Menard Penitentiary two weeks ago in just that kind of a situation.

[30] Q The reason there is that you didn't know enough about the man?

A Well, we had some factual information which related back to activities in the East St. Louis general area, some activities also allied with some other community action group, and it was directly involved in the type of confrontation—I think with members of the institutional staff.

I think this individual had just been received, and we really didn't have a chance to have any dialogue with him and see what his problems were and what his needs were, and to be able to judge whether there would have been any effects that Paragraph 3 of our general policy

on interviews would have brought to light before deciding to grant such an interview.

Q But you feel once you have had some experience with a man, you can identify or determine whether he would be a troublemaker or would be a worse troublemaker if he were permitted to have an interview?

Could you make that kind of determination?

A Our feeling is that the present policy is working satisfactorily, and after a period of time [31] with an inmate in the general population, the individual warden has an opportunity to make that type of decision.

Q I just want to be clear in the record, your view on whether the information resources available to a warden permit him to make a determination as to whether an inmate is the sort who would be a real troublemaker or a worse troublemaker if permitted to have an interview—that appears to be the kind of determination called for in your policy?

A Yes.

Q And do you have confidence that that determination can be made with the resources available?

A Yes. But let me hasten to add that the warden himself will not solely make that decision without getting recommendations from his chief custody officer or chief of the clinical staff, inmates' counsel—

Q Right, I understand that.

But given those various inputs that he can make this kind of decision?

A That is our feeling.

[32] Q During the period that your present policy has been in effect, have there been many requests by members of the press for interviews with inmates? Can you give us some rough idea of the quantity of the requests there have been?

A Oh, we have had a number of—I know stories and articles written about views of various inmates in various institutions and also outside on parole. I would—I would really be guessing as to the number.

It could be, since April of 1972,—we are talking about a six-month period—perhaps we have had a dozen interviews at the most. Now, we have had a lot of mem-

bers of the media to our institutions and visit institutions and talk to inmates, but it has been informal in structure, sitting down and going over on an informal-type of an interview basis.

At Pontiac, many of the inmates participated in guiding the visitors on tours.

Q I am talking about in depth discussions, really?

A I would say no greater than 10 or 12.

Q Have been granted or requested?

[33] A Have taken place.

Q Do you have some idea of the numbers that have been requested?

A No. But I could tell you the number that I am aware of that have been denied. It would probably be maybe a half a dozen at the most, maybe three or four.

Q Okay. Since the current policy has been in effect, have there been any inmates of Illinois prisons who are well-known to the press and the general public?

A Say that again?

Q Since the current policy has been in effect, during the period since April, 1972, have you had in your institutions any inmates who are well-known to the press and general public perhaps for reasons occurring prior to their imprisonment, because of their crime or for some other reason?

A Since April of '72, have specific interviews of people—

Q I am not talking about interviews.

Are there inmates who are well-known to the public?

A Oh, we have inmates very well known to the [34] public.

Q Can you give us some examples?

A Richard Speck—

Q And are there other inmates who—

A —William Heirens. In Illinois?

Q Yes. People who are well known?

A Jeff Fort.

Q Have there been any requests for press interviews with these inmates?

A We have denied requests and so has—through a

letter we received formerly, I believe, from Richard Speck not to grant interviews.

Q He requested you not to?

A We also decided that this would not be appropriate. He requested us, as well. We have a note from he and his attorney on that. He has a case pending in Peoria.

Q But in general, does your policy preclude interviews with well-known inmates if they consent and if there is no case pending?

A It is hypothetical. It might in certain cases. We had an inmate at Vandalia, Bobby Rush by name, who was the Deputy Prime Minister, Defense Minister of the Black Panther Party. He was given an [35] interview, an unsupervised interview, I believe, at Vandalia two years ago.

That resulted in an inflammatory article which I objected to, which caused considerable tension on the grounds of the institution, and considerable problems with our staff, and had a number of inaccuracies. And as a result of this, we had to transfer him and did, and he was not granted more interviews.

Q Did the transfer remove the problem or reduce it?

A Well, I think it caused—well, it didn't reduce it immediately, because in this particular case, we are talking about an inmate who was a member of the Black Panther Party, which certainly has a connotation, I think, in terms of the general public of being a relatively militant black activist group, and in the case of this individual inmate, he was on a misdemeanor from Champaign.

He comes from Cook County originally, and was in an institution which had about a 70 percent white, 30 percent black population, perhaps a little higher. Through his efforts and certainly through this article, there was an evident attempt, I think [36] on his part and possibly on others that are at the institution to try to develop a ratio, a series of issues and problems at that institution, which this news interview not only heightened, but after its publication, gave encouragement to those that were present at the institution who had ready access to the paper.

And even after Rush was transferred, there were a number of lingering tensions that took place in the institution.

Q Could he have gotten the same views across to a newsman through the mail?

A He could have written. I think the newsman might have had less of a story to tell, by number one, not having driven 150 miles. Two, having added into this story that he had a personal interview, and this was the environment, and then come back and do the story on a first-hand basis, which I think added some sensational aspects to the story that might not have been interpreted by the public in the same light as the letter.

Q Does your policy in general preclude interviews with inmates who are leaders of groupings of inmates within an institution?

[37] A Does our policy preclude an interview of a leader of a group of inmates within the institution? It depends on the situation and the individual. In this case, this was a leader.

Q But I mean a general prohibition?

A No, I wouldn't say it would be. But I wouldn't say in a certain situation a leader might not be prohibited?

Q Right, I understand.

I direct your attention to Paragraph 4 of Exhibit 1.

A Right.

Q And ask you if you can amplify why your policy provides that interviews in general should be granted?

A Because I think the public historically has had a view that prisons have been pretty far removed, and that the events that have taken place behind the prison walls have been—I don't think necessarily accurately reported or understood. And I think the public still thinks of the prison in terms of the late movies and of the big institutions with 30-foot walls. And they tend to think that the problems of prisons are just located out in those [38] rural areas where they are located, and that there is no responsibility on the part of the public and the private citizens to participate in the correction process, much less to pay for it.

**Q** And is it your experience from dealing with the public that the public is not well informed about prison conditions, the problems that face staff members and administrators and inmates?

**A** Particularly the latter. I don't think that the public is consistently informed. Although, I think the press has made a major effort to try to be more responsible to the problems of some of the administrators, particularly of late, but usually the news story follow in kind of a scale of escape or disturbance or riots, and then a parole violation and troubles, and then third, maybe programs that are—you don't read about as often.

And there are exceptions. An inmate at the Marion Penitentiary in Illinois had a good story on his getting a college degree. Well, that is the exception, although there are a lot of inmates now getting associate in arts degrees and college degrees.

**Q** Do you feel that allowing interviews between inmates and members of the press contribute [39] in some significant way to the informing of the public about the problems and the conditions of the penal institution?

**A** I think interviews with inmates and interviews with administrators can and should contribute to the better understanding of the problems and the needs of the community. In fact, we passed a law to establish visits by inmates to participate in panel shows outside of the institution, after being properly screened, to talk about the problems of crime and drug abuse.

The inmates leave the institution and can participate even in a radio show and have. So it isn't always having the interviews done in the institution. You might accomplish more by bringing a couple of inmates, which we did last month at the Rock Valley College outside of Rockford, to participate in a panel discussion.

But I think we want to encourage greater knowledge and participation in the correctional process on the part of the public, and as represented by the news media.

**Q** Let me go back a moment.

Your experience with the Bobby Rush [40] interview.



I take it it did not lead you to ban all interviews with inmates?

A No. That is correct.

Q Your feeling is that you can deal with the isolated problems individually?

A I think the warden and the superintendent in this case made a judgment. This person had come 150 miles to interview the inmate, and yet he had apparently come with somewhat of a preconceived idea as to how he would handle that, and it didn't turn out satisfactorily.

Q Right. But the result was a decision not to permit interviews with this particular inmate?

A And we had raised some questions with the person doing the interview, although subsequently some of the interviews that this individual did I think presented a more balanced perspective.

Now, on this particular case, were it I, I might not have granted that particular individual an interview with that particular inmate at Vandalia. I think we may have had enough information on his perspective to say maybe we really don't want to have an agitation on racial issues that don't need to be polarized, to take place. But it was the [41] judgment of the superintendent at that time that he thought it could be helpful without that.

You know, maybe he didn't anticipate the result of the writing.

MR. COOPER: Would you mark this as Bensinger Deposition Exhibit No. 2?

(WHEREUPON, said document was marked Bensinger Deposition Exhibit No. 2, for identification, as of 11/8/72.)

MR. COOPER: Now, I hand you a document that has been marked Bensinger Deposition Exhibit No. 2, and I ask if you can identify that document.

(WHEREUPON, the document was tendered to the witness, and after a short interruption, the following further proceedings were had, to-wit:)

THE WITNESS: I can identify this document. It is the statement of policy guidelines on access to the media approved by the Association of State Correctional Administrators in Pittsburgh in August of 1972.

BY MR. COOPER:

Q Now, I ask you to look at the second page [42] of that exhibit in the section headed "interviews."

A Yes.

Q Where it says "media requests for interviews should be handled on an individual basis"?

What is meant by the phrase "on an individual basis," could you elaborate on that?

A I think, Mr. Cooper, what is meant is basically the same issues which I addressed myself to in the course of our earlier dialogue on why and when and where interviews might not be appropriate, and specifically with our administrative regulation 011; that as the Association of State Correctional Administrators, we didn't feel you should say you automatically have to grant interviews in general. But we also said you automatically shouldn't deny interviews.

Q You did not say you should deny them?

A We said neither should you grant them nor should you necessarily deny them out of hand, but they should be handled on an individual basis.

Presumably by institution or by system. Some of the systems have more complex or different needs than just our state, which has three maximum security institutions. So I think we meant on an [43] individual basis, but that we felt this should be left really to the individual administrators, the wardens and superintendents on a case handle basis.

Q And did the ASCA believe that such a policy requiring an individual determination in each case was workable?

A Well, I was not present at the Atlanta meeting of January in 1972 when this was developed and discussed in great detail. We broke into subcommittees and had five or six people on each of the eight policy guidelines we developed.

When we passed it in August, it was not discussed in great length as to whether this anticipated kind of problem you raised. So, I could say, you know, the association thought that it would not raise problems because we—

Q Maybe I didn't make myself clear.

By promulgating this guideline, did the ASCA in effect take the view that such a guideline could be effective?

A Yes.

Q And that it would work?

A And once more that it would be a point of reference that individual states could use as [44] they move from existing policies to a more unified national posture.

Q And that such a policy requiring individual handling of requests for interviews would carry out correctional goals, is that correct?

A Yes. And carry out the goals of the association which was to further the professionalism and better understanding of some of our problems and needs.

Q Could you describe briefly the deliberative process that resulted in this particular guideline; I mean, what kinds of stages did it go through?

A Yes. Our first discussion really took place in, I believe it was August of 1971. As a matter of fact, it was a month before Attica in Florida at the annual meeting of the American Correctional Association.

A number of administrators, myself, Walter Dunbar, Bennett Cooper of Ohio—Dunbar is in New York—Ray Procunier of California, J. J. Clark of the Federal Bureau of Prisons, and two or three other administrators, and we met informally in my hotel room, and we were talking about common problems. And we said maybe we should meet as an associa- [45] tion and just address ourselves to some urgent needs that we had.

And we agreed to meet in San Francisco in October, which we did. At that meeting, we agreed to develop some policy guidelines, uniform approaches to disciplinary procedures. A lot of court suits were taking up a lot of time. Federal suits involving administrators and war-

dens fracturing inmates—from the staff—setting up sides.

We wanted to avoid that. We also didn't want to have one person in Indiana—Michigan, having a Federal Court come down with one decision and then the next state be bound necessarily by that and change their procedures.

We wanted to anticipate some of the future directions. So we arranged to have a special meeting held in Atlanta, and the Federal Government provided an LEAA Grant to fund travel and expenses for a meeting of correctional administrators. I asked the Attorneys General, the National Association of Attorneys General, to assist us. They did. They sent representatives. We also asked for participation in terms of a good dialogue with correctional administrators.

[46] The Atlanta meeting was held. Representatives from the State Legal Department, Attorneys General and the stated administrators broke into four, possibly five sub-groups that dealt with two guidelines in each sub-group, and after the guidelines were developed, they were approved at last in total in Atlanta for subsequent final disposition in August, in our August annual meeting. President —Ex-President Bill Leak presented them. I was Secretary. And we reviewed them, and each of the guidelines were approved.

Q What was the final body that approved this particular guideline?

A It was at the annual meeting of the Association of State Correctional Administrators. There was approximately 30 to 35 of us in attendance.

Q And can you say how this guideline had been received after its promulgation?

A I think it has been received favorably. We did issue a press release on it. We made it available to law schools and to interested parties throughout the country who have written for copies.

In one case I know in the State of Maine, [47] the disciplinary procedure guidelines were satisfactory to completely eliminate the need for a court hearing and a suit in a Federal Court there, because the administrator

showed this to the Federal Judge, and she said, "This looks fine," and she agreed to adopt it, and that was one, I believe it was at the disciplinary section.

So I think it has been helpful to administrators. It is also helpful in dealing with the legislature, where you may require funds, specific dollar amounts, to be able to implement all of the provisions of this in having people hold these hearings and to have the medical services available.

So I would say it has been received in a favorable vein.

Q Okay. I have just a few more questions.

In your judgment, are the security procedures that are used in the normal course of your institutions with respect to outside visitors sufficient to prevent any members of the press from introducing contraband, during their visits with inmates?

Can you use the same kind of procedures [48] that you used with other visitors as you do with the press?

A Could we use the same security procedures with the press as we do with outside visitors?

Q Yes. Is there any reason why you could not?

A None to my knowledge.

Q From your experience, have members of the press shown any greater tendency to introduce contraband into institutions than other people who visit inmates?

A I don't have any specific knowledge that that would happen by a member of the press. The member of the press definition varies widely.

Q Do you have any reason to think that there—

A Well, in California they have had some problems with both attorneys and I think members of the press bringing things in, where they have had private interview rooms and nobody has been present. And I know Mr. Procunier feels that the George Jackson killing was a direct result of contraband being introduced by an attorney who was granted private interview space.

I personally don't have any particulars of [49] that case. I do know in some states and in some situations, anywhere where special arrangements are made can present some additional security problems. In our state, they haven't been that extensive, but it could happen elsewhere.

Q But do you have any reason to believe that members of the press are more likely to pose a problem in this area than lawyers or friends or relatives?

A Contraband?

Q Contraband.

A No.

Q Do you have any reason, from your experience, to think that members of the press are more likely to participate in escape plans, to solicit offenses or make other unlawful or improper communications with inmates than lawyers, friends, relatives or other visitors to inmates?

A No.

Q Again, from your experience, are interviews between inmates and members of the press any more burdensome administratively in institutions—

A Yes.

Q —than interviews with lawyers and other [50] people?

A I would say so.

Q In what way?

A Well, you have to have consent forms, number one. And number two, in some cases, interviews with the press are not always given in advance. You have to get inmates off of the call lines. You have to really, to be responsive to our general administrative directive, give some consideration to whether the interview should be granted.

You may have a space problem. You may have a time problem, the interviewing time. I would say interviews with the press would take more time, more staff and be a greater administrative problem than almost any other type of interview.

Could we go off the record for a moment?

MR. COOPER: Sure.

(WHEREUPON, there was a short interruption, after which the following further proceedings were had, to-wit:)

BY MR. COOPER:

Q If you compare the administrative burdens that you have described resulting from requests for [51] in-

interviews and the holding of actual interviews between inmates and members of the press in the aggregate, taking the total number of requests and the total number of interviews with the members of the press held and compare it to the administrative burdens resulting from the total number of interviews between inmates and their lawyers, relatives, friends, how significant is the burden resulting from requests for press interviews and the holding of such interviews?

A It would depend, I think, on the situation in the institution. We have not had that many requests, but where we have had a problem in an emergency or disturbance and we have had a request, we may not have granted it.

Q I am talking about simply the administrative burden in normal times?

A I don't think we have had an insurmountable number of problems. We have had problems. It does require more time, but in the aggregate, to follow your line of questioning, I wouldn't think that the problems posed by interviews would be so overwhelming as to outweigh benefits of having improved communications.

[52] Q You said since the policy has been in effect there have been some, oh, 18 or so requests or something in that order?

A I couldn't even tell you. I was guessing. Of an interview nature, I said maybe a dozen or maybe a dozen and a half, and maybe we have turned down three or four, I think. And those are that I had personal knowledge of.

Now, the institutional administrator has this guideline—

Q Right.

A —and he may have granted more interviews than I am aware of.

Q Do you have some idea of how many other interviews may have occurred during the year?

A I could find out.

Q Would that be in the hundreds?

A I have no idea. We have, I would say, probably tours, visitors walking through, members of trade ad-



visory boards, people coming from the Chamber of Commerce, the Jaycees, people coming for special events.

Q I mean principally lawyers and relatives and friends who come in the ordinary course of visits?

[53] A How many visits?

Q Yes. Would there be a great many more such visits by the press?

A Oh, I would say thousands.

Q That is what I want you to compare, the burden of that kind of visit in the aggregate with the burdens of newsmen visiting in the aggregate, comparing—if you are going to consider the numbers?

A The numbers are vastly different. We are talking about one in tens of thousands of visits from non-media people—

Q That is what I am talking about.

A When you are talking about media people, it is in the dozens, if that, in the private interview sessions.

On the other hand, when that happens, it is an administrative problem and it should not be treated lightly.

MR. COOPER: No, I understand. Okay.

## CROSS EXAMINATION

BY MR. KATZ:

Q Mr. Bensinger, for the purposes of the [54] record, could you just give us a little information respecting what other positions that you have held prior to becoming the Director of the Illinois correctional system?

A Sure. I was Chairman of the Illinois Youth Commission in 1969 until 1970. I was Chairman of the task force on the formation of the Department of Corrections in 1969, '70. And prior to that I was Administrative Assistant to the Director of Public Safety. And prior to that a member of the Governor's Transitional Task Force, which dates back now to November of '68, about four years ago.

And prior to that I was in—I worked for a large manufacturing company in private industry in marketing positions.

Q So you never have actually worked inside a prison

or a correctional institution? You didn't come up through the ranks, as it were?

A No. As a matter of fact, I have had no specific line experience as a correctional guard or captain or lieutenant or warden or assistant warden.

Q With respect to the regulation 011 which has been identified as Deposition Exhibit 1, you [55] stated that that was made effective in April of 1972.

Prior to that, you had no specific promulgated policy on the subject of press interviews, is that correct?

A Yes. That is correct.

Q Was there any unofficial policy on the subject prior to that time?

A Not to my knowledge.

Q What was the practice of the department with respect to inmate interviews prior to the time of the adoption of this policy?

A It varied. You had people in the institution who had perhaps been a warden there for eight or 10 years, and felt he knew his job and population pretty well, and he would grant an interview and might not have even called the Director of Public Safety. Probably another institutional warden may have been concerned and said, "I have got a guy from the press", and called the Director up and said, "What should I do with him?"

And maybe the Director thought about it and told him what to do. I would think that was the practice, and an unfortunate one.

[56] Q They were all handled on sort of an ad hoc basis?

A Yes.

Q Was there any particular reason that you decided to promulgate a specific policy on the subject at the particular time that you did adopt this policy?

A We felt that we needed to promulgate policies covering a wide number of areas involving discipline, involving health, involving mail, involving visitors, involving news media visits and interviews, and wanted to do it all at once, and this is certainly one of the areas which has in the past raised some question in the courts, not only in Illinois, but outside of it.

**Q** All right. Referring to Paragraph 3 of the policy, the person referred to there as the chief administrative officer, that is the warden or superintendent of each particular institution, is that correct?

**A** That is correct.

**Q** So to summarize your policy, the warden or superintendent of each institution is given very broad discretion on the subject of whether or not [57] to permit an interview?

**A** Yes.

**Q** Is there any requirement that when a warden declines to grant a request for an interview that he make a written record of his action?

**A** There is no stated policy that he must do this. On the other hand, I would believe the practice would be to make notations and certainly to advise his superiors.

**Q** Has there ever come a time when any decision of a warden or superintendent to deny an interview has been appealed to your office?

**A** Members of the press have—I believe made known to my office that an interview was not granted, and I affirmed the institution warden's and superintendent's decision.

**Q** In each case?

**A** Yes.

**Q** I think you mentioned two specific instances in which to your knowledge interviews were turned down. One, involving the Joliet incident and one involving this gentleman who was from the Black Panthers.

Could you tell us about any of the others?

[58] **A** There was one other recently that I mentioned which took place at Menard Penitentiary, and this was a—I think the inmate's name is Kelly Paton. He was recently—I think he had been to Menard previously. He had a history of a very high level of visibility in the St. Louis area, and just came into our reception center there, and an interview request was made by a local newspaper in the East St. Louis area. The warden and superintendent felt it would be a mistake to grant an interview with-

out having further knowledge of him in the reception process, and also taking into consideration some ongoing dialogue taking place at the institution. So that interview was denied by the institution's superintendent.

Q This is pursuant to what seems to be the general practice of not permitting an interview with a prisoner who has newly come into an institution because of the fact that the warden does not have enough information about his proclivities and so forth?

A Partially. And I think also in the light of his somewhat higher level of visibility in terms of education outside of the institution at the same [59] time.

Q Could you amplify a little bit on that?

A Well, I really would need to have further particulars on that, but I was satisfied when I was called and discussed it briefly with Warden Brantley; that he had a dual basis of denial of the interview and was concerned with the effects such as an interview would have on his own institution.

Q I was wondering if you could explain this term, "Level of visibility outside of the institution"?

A This is an individual that participated, I think, in East St. Louis, Illinois, and had gotten a name for himself, developed a name for himself as a leader of certain militant forces and factions, and when received at Menard, might have continued to communicate with the general public in the same militant fashion as a result of—and through the course of an interview.

Q In other words, he was identified as being a potential troublemaker?

A Yes.

Q And it would be your view that it would be desirable in all instances to preclude interviews with [60] persons that would be considered to be potential troublemakers?

A I would say that it would be the responsibility of the institutional warden and superintendent to preclude interviews with individuals who would raise or endanger—let's use the word "endanger" the security, the normal operations of the prison. And if you use "troublemaker," yes. That phrase the public knows.

What we mean is somebody that might, inside, make a disruption of the normal operations of the institution or jeopardize the safety and security of the staff.

Q Is this in the judgment of the warden or superintendent?

A Right.

Q Have you had many disturbances in your prison system over the last year or so?

A Probably less than most major states. We have had our share. Let's say less.

Q And in general, you feel that under your policy, it would be desirable to preclude individual interviews immediately following a disturbance?

A Yes. That has been our practice, too.

[61] Q Have you had any strikes—

A Inmate strikes?

Q Inmate strikes.

A No.

Q Would you permit interviews with inmates who had been involved in an inmate strike?

A During one?

Q During one.

A No.

Q Or immediately or shortly following one?

A I am not sure that I would grant it. It would have to depend on the situation. Immediately following a strike?

I would want to have a case handle situation and weight that carefully.

MR. COOPER: Would you clarify, for the record, whether you mean a peaceful strike or a strike for violence? What kind of strike?

THE WITNESS: I interpret it as a sit-down strike, but you could certainly amplify it and perhaps I would have a better understanding.

BY MR. KATZ:

Q Well, let's say a peaceful strike. In other words, not one accompanied by violence and [62] disruption.

What you might term as a sit-down strike, I assume you would consider a peaceful strike?

A We did have one instance—pardon me. I'm going to go back—in Menard in 1971, where inmates did sit down in the yard. They did not return from the yard. And that was the only kind of work stoppage. It was a brief one for about three hours. But we didn't have a request for an interview, nor did we grant one shortly thereafter.

It was resolved without a major confrontation, although the warden certainly did threaten to use some force.

Q At what point following the termination of a strike or some other violent event or otherwise would you draw the line at prohibiting interviews at one point and permitting them at another?

A Where the institutional warden or superintendent felt that the granting of that interview would not mitigate for resumption of the strike, cause undue pressures on the negotiating ability of the superintendent or warden, or reduce the institutional staff's ability to deal with their situation or bring unnecessary tensions and pressures on [63] the institution, and that would depend really on the judgment of the warden or superintendent. It might be a matter of weeks.

Q Does the Illinois Department of Corrections have a policy respecting correspondence between prisoners and the news media or representatives and the news media?

A Yes.

Q What is that policy?

A It has a policy in terms of correspondence that would indicate that a member of the news media would apply or be applied for to be added to the visiting list just as everybody else—on the mailing list. Scratch that. It was mailing list, not visiting list.

In other words, if a person wanted to add a news reporter, a member of the media, to be written to, they would request his name be put on a list, and that inmate then would have the—that name considered along with the other names that would be added to his correspondence list.

Q It would be considered by whom?

A The warden or superintendent.

Q The warden or superintendent has the discretion to deny it? [64]

A Yes, he has.

Q In the event that the warden were to grant the correspondence privilege with a member of the news media, would that correspondence be censored?

A No.

Q Would incoming correspondence be read?

A It would be opened and inspected.

Q It would not be read?

A It would not be read.

Q Now, just referring to Paragraph 4 of your regulations stating that interviews in general should be granted in the interest of the public so as to provide better insight into the prison situation and so forth, which you amplified earlier.

Do you feel that it is—at least from the standpoint of a prison administrator such as yourself—that the same purpose could be served under a no-private-interview policy through the use of other substitutes for it, such as visits by the news media to the prisons without interviews and free correspondence between inmates and the news media? Do you feel that would serve the same goal?

A I think those are compatible goals. I am [65] not sure the impact is the same on the reporter or on those that are reading the story, as a reporter being able to say, "I personally interviewed a person at this location."

I think it depends really on what you are trying to get across. I wouldn't say it is a substitute completely for a personal interview.

Q But do you feel—and again I say from your viewpoint as a prison administrator rather than from the viewpoint of a newspaper reporter, necessarily—do you feel that such a substitute policy could be served substantially to reach this goal?

A I think it would serve to reach the goal, yes. And I think it would make a substantial contribution in doing it.



Q Mr. Bensinger, are you generally familiar with the Federal Bureau of Prisons and the system of institutions under its jurisdiction?

A Yes.

Q And you are aware that there are some 30-odd institutions that are under this jurisdiction of the Bureau?

A Thirty-two, I believe, at last count, but I am sure there are over 30.

[66] Q Do you have any opinion respecting whether or not the policy which you follow of vesting broad discretion in the wardens could necessarily be successful with a system like that in the Bureau of Prisons?

A I think it would be less successfully implemented. I think in the Federal Bureau of Prisons, where you have 32 different institutions, you would have some problems. You have got inmates that are going to be assigned from one institution to another, who might have a practice at one location and not the same practice in another, and you have got distances in the Federal Bureau of Prisons that we don't have, of 3,000 miles rather than a couple of hundred miles.

You have some ranges of security that we don't have. So I think, yes, I think a fair answer to that question would be that there would be greater complications in implementing our policies as we have identified in the deposition earlier.

Q So it may well be that uniformity is a more important consideration in the system rather than under your jurisdiction?

A I would say where you have a greater number [67] of institutions, the need for uniformity would be increased.

Q I think you mentioned Mr. Speck as being one of the inmates under your jurisdiction of national interest?

A Yes.

Q Is there anyone else besides Mr. Speck who is a national figure?

A Yes.

Q Who would that be?

A Well, I mentioned the name, Jeff Fort. He is the leader of what we in Chicago call the Black P Stone Nation, which is probably one of the largest street gangs in the country. We have a number of people on the death row-condemned unit section that have been committed for various serious crimes.

We have a William Heirens, who incidentally has received a college degree and has been incarcerated for some 25 years. And I could give you names of people that I think may make some national impact, but they would probably be better known locally in Illinois.

Q I think you stated earlier that it was the [68] decision, entirely apart from Mr. Speck's desires in the matter, not to permit interviews of Mr. Speck, is that right?

A Correct. In fact, we have not permitted any interviews with people on death row.

Q Could you tell me why?

A Two reasons: One, all of our cases in Illinois are up for resentencing as a result of trials pending, first in the U. S. Supreme Court decision and then following that, they are being remanded for subsequent sentencing.

Secondly, the policy that existed with respect to interviews in death row was in our opinion satisfactory to the inmates who are in an institution, and we have never granted—have not granted prior to my time and during it—a change in this policy of having—of men brought out for special interviews in special interview rooms from this one section.

So it is a question of litigation. It is pending on the Court's deposition. It is a question also of a continuation of a past policy that seemed to be working.

Q With respect to what has been marked as [69] Deposition Exhibit 2, the Association of State Correctional Administrators, I just wanted to clear up one matter.

Under the heading, "specific situations," you stated—the policy states: "Media requests for interviews should be handled on an individual basis."

Now, was it your testimony that this is a matter—the entire realm of media interviews is something which

should be determined on a state by state basis, would you say that?

A I think that my testimony would have implied that it could have been on a state by state or an institution by institution basis. I think the primary thrust of it would be on an institutional warden basis, but I don't think it would be outside the realm of possibility that a system might—no. Let me rephrase this.

As the Association of State Correctional Administrators, I believe this really refers to a state system, granting interviews on an individual basis for their state institutions. That is my interpretation. I think my testimony did include reference to a system and a state or an individual [70] institution and a state system.

So I am glad you asked that question.

Q Do you know how many states have adopted this particular policy?

A Well, I don't know how many have implemented it in practice. We, as a state association, adopted the policy, but we could determine how many in fact have got this policy next weekend and let you know.

MR. KATZ: I believe that is all I have.

MR. COOPER: I just want to clarify a few points.

## REDIRECT EXAMINATION

BY MR. COOPER:

Q Mr. Bensinger, when you were talking about the applicability of your policy to the Federal Bureau of Prisons in their institutions, you mentioned matters such as the distances of institutions from urban areas and whatnot. And you said that might cause problems.

Did you mean by that that it would cause security problems within an institution or that there wouldn't be as many interviews and that the [71] policy would not be as effective in generating interviews because of the matters you described, the transfers of inmates from one place to another maybe without the press knowing or the distances from institutions from urban areas?

What types of problems do you foresee?

A Well, I think when you have 30 to 32 different institutions, you have inmates that are certainly given every access to the courts and are familiar with what is the procedures at one institution, and they move from Terre Haute to Leavenworth or to Atlanta, you automatically, where you change the ground rules in one institution, create tensions among the inmates. If they don't have the same rights and the same procedures in the next institution, it is something that is a complaint, it is an irritant to the inmate, it becomes an issue with the administration. It is just an administrative problem that you can get rustled around with if you have a lot of different locations, and we really have only three major institutions and have tried to, you know, adopt this policy that we have, which on an individual basis we have seen evidence of it enforced and some [72] interviews denied, but they have been somewhat limited. We don't have that many inmates, 6,000 compared to 20,000, or that many institutions, and I am sure that as one inmate goes from one institution, say in one state, to another institution in another, and he doesn't have the same interview policies in effect, it may be used as a complaint or grievance against the institution improperly or properly, but it is an additional item that could be an irritant.

Q Are you satisfied that your own policy as it is operated and even given that maybe some mistakes have been made in implementing it, that it is a satisfactory policy?

A Yes.

Q Are you satisfied with it?

A Yes.

Q I just want to go back once more and try to clear up one of the points about the ASCA policy.

When it refers to an individual basis, I understood—and correct me if I am wrong—I understood your testimony to be that it means that on a statewide basis or institution by insti- [73] tuition basis, decisions would be made request by request?

A That is correct. That was the source of my testimony, but I think the point was raised—and I am

trying to recall my phraseology—that I might have mentioned the word “system.” But my interpretation of this, since it is basically a guideline for state administrators, is that that would refer to an individual institution interview policy for an interview for an inmate in that facility, within that state system.

Q Just one other point.

Your policy is indeed a policy? It does direct the administrators to consider certain matters and provides them some guidance on how to implement it?

A That is correct.

Q It is just not absolutely discretionary by whim or caprice from one institution to another? There is some policy, some guidance there, is that correct?

A We have provided, I think, some guidance to the individual administrators in the areas that they should take into consideration, on which possibly [74] an interview might not be granted. But that decision is discretionary with the wardens and superintendents, and I would not say that the guidelines are narrow by any means.

Q But given human differences, there is one policy that applies to your institutions?

A Yes, that is correct.

MR. COOPER: That is all I have.

MR. KATZ: May I just ask a couple of more questions?

## RECROSS EXAMINATION

BY MR. KATZ:

Q What is the average range of experience of your wardens and superintendents?

A How do you mean, range of—

Q How long they have been in the system and so forth? Are they experienced men?

A Very experienced men. I would say they have been in adult corrections between 10 and 20 years, and in various levels of responsibility.

MR. KATZ: That is all I have.

MR. COOPER: Thank you.

You can have an opportunity to read this [75] before it goes in and sign it, or you can just waive it on the assumption that he is taking it down correctly.

THE WITNESS: He has taken it down correctly, but I would probably want to change my grammar. But you go ahead and do what you want.

MR. COOPER: Well, that you can't do.

THE WITNESS: What?

MR. COOPER: You can't change your grammar. The question is whether he took down what you said accurately. If you want to say that he did not, then—

THE WITNESS: What are you asking?

MR. COOPER: There is a procedure by which you can have an opportunity to sign this, by which you say that he took down what you said accurately, to—in most cases the people waive that and just assume that the reporter took it down correctly.

In other words, if you want to go over and read it before you sign it, you have that right, or you can simply waive it, but it is not like the Congressional Record or a Congressional [76] hearing where you can improve on your grammar. If you want to say that he did take something down incorrectly—than what happens?

THE REPORTER: Then you would make your corrections and initial each correction.

THE WITNESS: What would be the preference of you two gentlemen?

MR. COOPER: We will waive signature.

MR. KATZ: We will waive signature.

MR. COOPER: If you are prepared to read it to make sure that it is correct—

THE WITNESS: I have confidence in the court reporter's ability to take down what I said accurately, and I will waive that requirement.

(AND FURTHER DEPONENT SAITH NOT.)

[77] )  
STATE OF ILLINOIS )  
COUNTY OF COOK ) ss.

I, TERRY KUPPERMAN, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify that heretofore, to-wit, on the 8th day of November, A.D., 1972, personally appeared before me at Suite 400, 160 North LaSalle Street, Chicago, Illinois, PETER B. BENSINGER, a witness in a certain cause now pending and undetermined in the United States District Court for the District of Columbia, wherein WASHINGTON POST CO., et al., are Plaintiffs and RICHARD KLEINDIENST, et al., are Defendants.

I further certify that the said PETER B. BENSINGER was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by said witness was reported stenographically by me in the presence of the said witness, and afterwards reduced to typewriting, and the foregoing is a true and correct transcript of the testimony so given by said witness as aforesaid.

I further certify that there were present at the taking of this deposition MR. RICHARD M. COOPER on [78] behalf of the Plaintiff, and MR. MICHAEL A. KATZ on behalf of the Defendants.

I further certify that the signature of the witness to the foregoing deposition was waived by agreement of counsel for the respective parties.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor am I in any way interested in the outcome thereof.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal this 17th day of November, A.D., 1972.

/s/ Terry Kupperman  
Notary Public, Cook County,  
Illinois.

My commission expires 7-29-73.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

WASHINGTON POST CO., ET AL., PLAINTIFFS

v.

RICHARD KLEINDIENST, ET AL., DEFENDANTS

STIPULATION

Plaintiffs and defendants, by their undersigned counsel, hereby stipulate that the following corrections be made in the transcript of the deposition of Peter B. Ben-singer:

p. 8, line 22	for "They" read "The"
p. 11, line 14	for "out of acting" read "acting out"
p. 14, line 12	for "come" read "some"
p. 19, line 3	for "Pecunic (phonetic)" read "Procurier"
p. 26, line 8	for "denies" read "denials"
p. 28, line 12	for "basieging" read "prejudicing"
p. 29, line 20	for "purposes" read "processes"
p. 29, line 21	for "which" read "with"
p. 31, line 20	for "inmates, his counsel" read "inmates' counsel"
p. 38, line 22	for "associated arts" read "associate in arts"
p. 40, line 20	delete first "with"
p. 42, line 9	for "further" read "earlier"
p. 46, line 6	for "least" read "last"
p. 47, lines 1, 2	for "was satisfactorily" read "were satisfactory"
p. 48, line 16 ff.	The passage beginning with the word "well" and ending at page 49, line 5 with the word "elsewhere" was uttered by the deponent and not by the questioner. Accordingly, the symbol "A." should be inserted before the word "well" on page 48 line 16, and that word should appear as "well".

p. 55, line 4	for "subject to" read "on the subject of"
p. 56, line 6	for "times" read "time"
p. 57, line 15	delete second "and"
p. 62, line 20	for "mitigate" read "militate"

An additional copy of this Stipulation is attached for insertion after the cover page of the deposition.

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**RICHARD M. COOPER**  
Attorney for Plaintiffs

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**MICHAEL A. KATZ**  
Assistant United States Attorney  
Attorney for Defendants

November 29, 1972

**ADMINISTRATIVE REGULATIONS****STATE OF ILLINOIS  
DEPARTMENT OF CORRECTIONS  
ADULT DIVISION****[EMBLEM]****SECTION NUMBER  
011****SUBJECT:****News Media Visits and Interviews**

1. It is the policy of the Department of Corrections to encourage visits by the general public, college students, and the news media to correctional institutions.
2. If pictures are to be taken, arrangements for same should be made with the Chief Administrative Officer prior to the visit. At no time can pictures be taken of inmates' faces without advance clearance from the Chief Administrative Officer and without the approval of the person to be photographed. The inmate must sign the Inmate Consent Form, a copy of which is attached, before such pictures may be taken.
3. With respect to requests for personal interviews with inmates, at all times the agreement of the inmate and the inmate's attorney of record will be necessary. The Chief Administrative Officer, prior to deciding to grant such an interview, will have to take into consideration the effects such an interview would have on the inmate and his personal mental attitude, the effects it would have on other inmates, the effect of such an interview with respect to any pending review by the Parole and Pardon Board, and the interest of the institution and Department.
4. Interviews in general should be granted in the interest of the public so as to obtain a better insight into the needs and problems of men in trouble and so as to provide an insight into how the community can be helpful.

**INMATE CONSENT**

The undersigned does hereby consent to be photographed,  
and/or interviewed by .....

**FOR THE EXCLUSIVE PURPOSE OF** .....

Said photographs may include filming of any kind, and  
said interview may include a recording thereof. The un-  
dersigned consents and authorizes that any such photo-  
graphs or interview material may be utilized by .....

for the aforementioned purpose.

Furthermore, the undersigned does hereby release and  
does save harmless the Department of Corrections, its  
agents and servants, from any and all claims for damage  
for libel, slander, invasion of the right of privacy, or any  
other claim based on the use of said material.

The above consent is given by me freely and voluntarily  
without any promises, threats, or duress.

Dated ..... Signed: .....

Witnessed by: ..... Address: .....

Address: .....

## **ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS**

### **POLICY GUIDELINES: ACCESS TO MEDIA**

The American public is vitally concerned with crime and is growing increasingly interested in corrections. Virtually all information reaching the public will be via the media of radio, television, newspapers, magazines, movies and books. Good relationships with the media are an important part of any modern correctional system both for the benefit of the public and the correctional system. It must always be remembered that correctional systems operate for the benefit of the public. Responsible reporting informs the public of the manner in which the correctional systems are operating. The media should, therefore, have access to correctional operations, except where such access would interfere with the orderly administration of the institution.

#### **GENERAL PRINCIPLES:**

There is no substitute for personal contact with the people who present the news to the public. Correctional officials should take the initiative in making and keeping acquaintance with representatives of the media. They should try to be as accessible as possible at all times to the media. When correctional officials demonstrate dignity, honesty, and dedication to their profession, they will almost invariably have good relationships with the media. Any appearance of lack of honesty may result in an overreaction by representatives of the media and may lead to the development of a bias against correctional officials.

Representatives of the media should be permitted access to institutions to the maximum extent compatible with their orderly administration.

Correctional officials should not be reluctant to state their views. Silence may be taken as meaning the lack of a

reason or a justification for an action which to correctional officials was clearly necessary.

Suppression of news and events of public interest is likely to result in a strong negative public reaction. It is preferable to alert the media immediately about news of importance, rather than have it reach them later through other sources. In an emergency, it is preferable to inform the media of the existence of the problems and to demonstrate a willingness to keep them informed.

Officials should regularly and conscientiously supply the media with news of general interest to lay the foundation for good relations.

#### **GENERAL RULES:**

Inmates should be allowed to send correspondence to and receive correspondence from media representatives with no greater limitation or restriction imposed by the institution than upon any other general correspondence sent out and received by the inmate. Restrictions may be imposed when correspondence endangers the security of the institution or impedes the orderly operation of the institution.

Inmates should be permitted to submit manuscripts to publishers or serve as book reviewers for newspapers or other publications.

Requests by media representatives for filmed interviews with inmates may be approved, if the filming of the interview will not interfere with the orderly operation and security of the institution. Written inmate consent should be required.

When an inmate is permitted outside an institution for rehabilitative programs or other public service, he may appear on radio or television. Written consent from the inmate may be required.

#### **INSTITUTIONS:**

Media representatives should be admitted to correctional institutions during administrative business hours. They

should be encouraged to contact the institution prior to arrival in order to make the necessary arrangements. By prior arrangement, access may be permitted during other than administrative business hours.

Limitations upon the number of media representatives to be admitted at any one time may be imposed by the institutional head. During institutional disturbances admission may be prohibited.

Members of the media may be escorted while in the institution.

## **SPECIFIC SITUATIONS**

### **INTERVIEWS:**

Media requests for interviews should be handled on an individual basis.

When the inmate in an interview is identifiable, his written consent should be required.

Access to any inmate may be restricted at any time that interviews interfere with the orderly administration of the institution.

### **PHOTOGRAPHS:**

Inmates may be photographed by media representatives in groups or as individuals. When an inmate in a picture is identifiable, his written consent should be required.

### **RECORDS:**

Matters of public record should be made available for examination upon request. Copies should be provided at the expense of the requester, if institutional facilities permit. Confidential materials, such as inmate medical, psychiatric, law enforcement reports, or confidential court records should not be disclosed.



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**Civil Action No. 467-72**

**WASHINGTON POST CO., ET AL., PLAINTIFFS**

*v.*

**RICHARD KLEINDIENST, ET AL., DEFENDANTS**

The deposition of HANS MATTICK, called by the Plaintiffs for examination, pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before TERRY KUPPERMAN, a Certified Shorthand Reporter and Notary Public within and for the County of Cook and State of Illinois, at the University of Illinois, Circle Campus, College of Liberal Arts & Sciences, Center for Research and Criminal Justice, Room 4060, 618 South Morgan Street, Chicago, Illinois, on the 9th day of November, A.D., 1972, commencing at 2:30 o'clock p.m.

**PRESENT:**

**MESSRS. WILLIAMS, CONNOLLY & CALIFANO,**  
(1000 Hill Building, Washington, D.C.), by:

**MR. RICHARD M. COOPER,**  
appearing on behalf of Plaintiffs;

**MR. MICHAEL A KATZ,**  
Assistant United States Attorney,  
(United States Courthouse, Washington, D.C.),  
appearing on behalf of Defendants.

[2]

## INDEX

Witness

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Exhibits

Marked for  
Identification

MATTICK DEP. EXH. NO. 1

P.30

[3] (The witness was duly sworn.)

MR. COOPER: Let the record show that this deposition is being taken pursuant to notice; that Assistant United States Attorney, Michael Katz, is here to represent the Defendants, and that I am here to represent the Plaintiffs,

HANS W. MATTICK,

called as a witness by the Plaintiffs, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COOPER:

Q Professor Mattick, will you state your full name and address for the record, please?

A My name is Hans W. Mattick, M-a-t-t-i-c-k. Home address or—

Q Home address.

A 5619 South Dorchester Avenue, Chicago, Illinois, 60637.

Q Would you describe your educational background?

A Well, I have a Master's degree in Sociology from the University of Chicago.

Q What is your present employment?

[4] A I am a Professor of Criminal Justice and the Director of the Center for Research in Criminal Justice at the University of Illinois at Chicago Circle Campus.

Q Would you describe your prior experience with penal or correctional institutions?

A Well, I think I should begin around 1950.

In 1950, I became a research sociologist for the Illinois Parole Board in order to do a followup study on men who had been paroled to the Army during World War II, and what that experience meant both for the future of the military and the future of corrections in this country.

Then, in 1952, I went to work as a sociologist actuary for the Illinois Parole Board, stationed at Statesville

Penitentiary, Joliet, Illinois, where I interviewed all men who came up for parole in order to advise the Parole Board in its deliberations and where I conducted a series of studies on inmate populations and parole prediction studies.

In early 1955, I moved to the Cook County Jail in Chicago and became the Assistant Warden there, and continued in that position until December of 1958.

The next thing that is related to the field [5] of criminal justice is I was employed as a research associate for the Institute for Social Research of the University of Michigan in order to become the Director of a large scale gang delinquency project in the City of Chicago, which was called the Chicago Youth Development Project. This was street work with juvenile gangs in the city, and it was the largest juvenile delinquency prevention project that was financed that had ever been put on by the City of Chicago. That lasted until towards the end of 1966.

At that time, I—

MR. KATZ: Excuse me. When did that start?

THE WITNESS: It started in 1960, in July. I then became the Co-Director of the Center for Studies in Criminal Justice at the University of Chicago Law School, which was essentially a research center in the whole field of criminal justice, but with considerable concentration in the field of corrections, and that continued until September of 1972.

I have been in my current position as the Professor of Criminal Justice and Director of the Center for Research in Criminal Justice since September 1, 1972.

[6] BY MR. COOPER:

Q Would you describe the institution where you worked at Joliet?

A Statesville Penitentiary is the largest maximum security prison in the State of Illinois. It had a unique architectural design, having circular cellhouses, and it was considered the maximum security prison, which received those kinds of prisoners that could not be well-managed in the other four or five felony prisons in the

State of Illinois. At the time that I was at that institution, it had a population of about 3,000.

Q Were these felons?

A Male adult felons.

Q And did your activities and functions there bring you into close contact with the inmates during the time you worked there?

A Yes. It was my function, as I said, to interview every man who was coming up for parole, and to write a advisory report for the Parole Board and to apply a statistical prediction instrument which stated in quantified form the degree of risk that he presented on parole. And in order to write those reports from the best informational base, I went around [7] to the cellhouses, to the shops, to the recreational areas, inquiring into all of the relations of the inmates who were on the current parole docket so that I would have a fact basis before I had the inmate's testimony in the interview situation.

Q So that in the course of your work, you became fairly familiar with what went on in the inmate population and the dynamics of the population in the institution, is that correct?

A Insofar as a non-prisoner could become familiar with those things, yes.

Q And would you describe the Cook County Jail, please, during the period when you were there?

A The Cook County Jail was a maximum security facility that functioned as both a detention institution and a place where sentenced misdemeanants served out, would serve out sentences which were for the most part one year or less.

However, it was built for the detention function, so it was built as a maximum security institution. It had a cell capacity of 1302, and during the time I was there, the population varied from 1600 to 2250.

It had the entire range of offenses that it [8] is capable for man, woman or juvenile to commit and be charged. We had in that institution males and females, adults and juveniles down to the age of 14, city, county, state and Federal prisoners, and persons who were charged

from committing a public nuisance to capital cases to waiting for execution.

It was an institution that turned over about 23,000 inmates per year, and in terms of numbers at that time, it was the tenth largest penal institution in the United States.

Q What type of sentenced offenders did you have in that institution?

A The sentenced offenders for the most part were sentenced misdemeanants; that is lesser offenders whose sentences were one year or less, except for a group which might number 100 to 150, which had been brought back from the penitentiaries because they were back on some post-conviction hearing or would be in transfer status, and except for the eight to 15 persons who we always had there who were waiting execution, because Cook County was distinguished as being the only other city besides Washington, D. C. that maintained its own chair. And so we had these capital cases, some of them for periods of up to [9] 10 to 12 years waiting execution.

So that was the nature of the sentenced population.

Q What were your functions and responsibility as Assistant Warden there?

A I ran the jail. I mean, they were as broad and as detailed as were required to run an institution which in the nature of the case, given its degree of overcrowdedness, given the mixture of functions and populations that it sought to serve, and given the political conditions and context in which it had in its life, and being staffed, for the most part, by patronage employees, it could not be managed well. You simply stayed on top of the situation all of the time.

I think during the first 17 months that I was in that jail, I took not a single day off, not one, not a Christmas, not a birthday, and I averaged something like 110 hours a week. That was all three shifts. And that was because it took a maximum effort to keep the situation under control during the course of a major reform effort that was going forward at that time.

Q Did you have occasion during your period [10] at the Cook County Jail to spend much time in the cell

blocks and other areas which were used directly by the inmates?

A I spent most of my time in the cell blocks with the prisoners.

Q So that you obtained comprehensive and detailed knowledge of what occurred in the prisons and inmate life generally?

A Insofar as a non-prisoner can understand those things, I think I had as good appreciation as anyone might have been able to have.

Q What were your areas of academic specialization, research and publication?

A Well, I had training as a sociologist with a minor in psychology, and towards the end of my academic career, I concentrated in the field of criminology. And most of the writing and research that I have done since leaving the university has been in a relatively broad area of criminal justice but with a major concentration in corrections.

I have written more about corrections than any other single subject, anything from describing the problems of the Cook County Jail, writing a plan for the Unified Department of Corrections for Chicago [11] and Cook County, writing on the unintended side effects of imprisonment, on prisoners, evaluating the parole experience of persons during World War II as opposed to former prisoners who went into the Army.

In the Army, I administered prisoner-of-war camps for both Russian prisoners and German prisoners, and I wrote on that subject. I made a comparison between those kinds of prisoners and how they responded to their situations.

I did the first comprehensive survey of the jails in the State of Illinois in 1967, and told people more than they ever wanted to know about that subject.

And even then, there was a great deal that is simply unknown. And so I have written a great deal about the subject, and I have a publication list.

I have written three or four books and some 60 articles have been published.

Q In this particular field?



A Well, I would say of them, probably 25 or 30 are in this field. But I think the other fields I have written in are on juvenile delinquency gangs, drugs, sex offenders, popular topics.

Q Now, Professor Mattick, I'm going to ask [12] you a series of questions concerning inmate leadership patterns and social structures and then violence and disturbances in the prisons, and I would like you to answer the questions to the best of your ability on the basis of your experience in correctional institutions and your research.

Now, in your view, what role do prison administrators have in creating and maintaining leaders within a penal institution?

A Well, I think that they have a major and active role, because the number of prisoners in a prison always outnumber the staff, and therefore, the prisoners play a significant role in the day-to-day activities and the house-keeping and maintenance tasks, and to some degree the administration of most prisons, and in that respect the administration which has the ultimate control position tends to select on a variety of bases inmates to perform these functions. It bestows upon them a differential status. It gives them varying degrees of freedom and mobility or access to information, and those are the well springs of leadership combined with whatever native talents prisoners have for the leadership structure in the prisons.

[13] Q What are the particular talents or factors that would lead inmates to look upon particular persons among them as leaders?

A Well, it would depend in part on the native talents of the person, whether he was reasonably articulate, whether he has reasonable social skills. But that wouldn't be sufficient.

He would also have to have some significant position in the prison, whether that would be the clerk of a cellhouse or whether that would be the assistant to a shop foreman or whether he would be a person who was a porter or a runner, which looks like a low status position to outsiders, but which position has great me-

bility and therefore you can become a message sender and a message carrier, or persons who work in areas that give them access to goods in what is essentially a scarcity economy.

So people who work in the kitchens or bakery or where other scarce supplies are and therefore can distribute them illegitimately or serve other purposes of that kind, they tend to have leadership.

Q Does the fact that an inmate is well known outside of prison tend to make him a leader within a [14] prison among the inmates within the prison?

A It depends a great deal on the circumstances; that is, for instance, notoriety by itself can't bestow leadership.

For instance, Sirhan Sirhan, for example, or Richard Speck are simply notorious and that doesn't bestow leadership qualities on them. Or someone like Al Capone, for example, may have had great status outside of the prison, but when he was in prison, he became the object of revenge and attacks by persons who wanted to settle old scores, because it was felt that he couldn't implement enough power to retaliate in turn.

On the other hand, there were persons, confidence men or spectacular burglars or armed robbers with big scores or something of that kind, where their reputation precedes them and follows them into prison, and that then is combined, and also with certain talents and social skill and articulateness, and if it also looks as though they have a future in the free community, either in the illegitimate world or the legitimate world, that can play a part in the phenomenon that we call leadership.

Q What are the typical patterns of relation- [15] ships between prison administrators on the one hand and the inmate leaders on the other? How do they interact?

A It depends on the degree of sophistication of the two parties concerned; that is, an administration that is well informed and well deployed can interact with any inmate body in any way practically that it chooses, but a prison administration that is relatively isolated from its inmate body and has only the most formal kinds of relationship with them, is very likely to be manipulated

by the inmate leadership or by individual inmates who fix upon the character of the prison administration for their own advantage.

So the prison administrators and the inmates interact actively in a whole variety of things. It is simply almost a total community behind walls except that it is age graded and unisexual for the most part, but every service, every function that a community would have on the outside is also on the inside, and that requires a considerable amount of interaction, and just as in the community, there is certain leadership both among the inmates and among the staff that is formal and conferred explicitly, and there is some [16] informal leadership which may be more covert.

For instance, among the guards, a person who is a cellhouse guard may as a matter of fact have more leadership qualities and more influence with inmates than a person who is a lieutenant. And so you have to distinguish between formal leadership structures, informal leadership structures, whether it is overt leadership, covert leadership, and there are considerable variations in between.

Q Does it follow from what you are saying, then, that relationships between inmate leaders and the staff are not always or generally hostile?

A Oh, no. As a matter of fact, I would say the vast majority of the relationship between inmate leaders and the administration, while I wouldn't describe them as warm and friendly, they are moderate, functional, task oriented and relatively neutral.

Q Cooperative?

A Oh, there has to be a certain degree of cooperation. There are different styles of administering prisons.

Statesville Penitentiary was an extremely formal prison where the prison administration didn't trust its own staff, and so they would say, "Never [17] address an inmate except to give an order." And they would say to all of the inmates, "Do your own time."

These were attempts to fragment potential social relations. On the other hand, in other prisons, in order to have the conventional influence, travel from the represent-

atives of the community, namely the guards and the prisoners, you have promotion of active social interaction, and hopefully constructive influence between the staff and the inmates, so part of that depends upon style. But there is—there are elements of both friendliness and hostility inside of that situation, because in the last analysis, the administration of a prison is a superior caste to an inmate body, which for the most part is a subordinate caste, and there are certain lines that you do not cross in either direction, but it does not follow that every man's hand is raised against every other man every minute of the day.

Most of the time it is a very normal kind of a situation.

Q In your view, are press interviews with inmates likely to win for them significant influence over their fellow inmates that they otherwise would not have?

[18] A I would say not in the absence of talents and qualities that the inmates would possess in any case.

And secondly, it might, if the administration responds to the fact of their having been interviewed by the press in such a way as to attribute qualities to them that they don't really have, that is you can, in effect, be like Dr. Frankenstein creating your own monster, so to speak, by attributing significance to a phenomenon that it may not really have.

So the fact that prisoners are perhaps interviewed by the press is not itself sufficient to confer leadership, although it may on other grounds.

Let me give you an example. For instance, I knew Nathan Leopold very well in Statesville Penitentiary. He was an object of a great deal of press attention, and there were constant attempts to interview him, and he acceded to that on various occasions. Now, Leopold was a talented person and he had a responsible position in the prison, but I would never consider him to be a prison leader in any sense of the word. He was much too remote and too intellec- [19] tual and isolated for that kind of thing.

So he had a great deal of press attention in the same way as when you get a spectacular kind of mass murderer who has a sentence of a considerable number of years,

from time to time the press recalls his existence, and somebody may go down on assignment and say, "Well, let's see how so-and-so is doing," and he will be interviewed. But that wouldn't confer leadership on him in any way.

On the other hand, he might be a person who was known, and let's say a leader on the outside of a gang or someone whose crime had required considerable organizational ability or he may have been someone who has given rise to a court case that poses some complex issues without the help of a lawyer, and the press pays attention to that, and if they play into that, because there are already other qualities there, there may be some degree in that.

Q If who plays into whose hands?

A I say the press could, if that kind of thing was going on anyway, but it can't create a denovo.

Q How is the phrase "right guy" used in discussions in prison life? What is a "right guy"?

[20] A Well, a right guy concept is a term that is used in a good many prisons, I suppose, for a person who has some degree of general recognition by both the inmate body and by the administration. I think in Statesville they were called "standup guys," and they tend to be persons who can take care of their own concerns pretty well; they are usually fairly tough in a physical sense, but that is not the significant element.

The significant element is that they are articulate, they understand the prison and how it operates, and in a crisis, they frequently play mediating kinds of roles, and can articulate some elements of what the inmates have to say, and contrarywise, can carry from the administration the responses. They have—

MR. KATZ: Excuse me. The term "right guy" that you are using refers to an inmate?

THE WITNESS: Yes. And it could be used adjectively about a guard, for example. They might say he is a right guy, meaning that he shares those similar qualities. So it is something really about people's personality as human beings.

[21] BY MR. COOPER:

Q But principally it is used to refer to particular inmates?

A Well, it is a concept that stuck to inmates in the prison context.

Q Right guys tend to be leaders among the inmates in certain types of situations, is that correct?

A Yes, I would say they tend to be leaders in certain kinds of situations, not for every purpose necessarily, and maybe not even the most significant leaders. It depends very much on the situation usually.

Q How does an inmate come to be recognized as a right guy by other inmates? How does he attain that status?

A Well, it is a question, really, of personal style, personal qualities and how he has managed himself, and where he has stationed himself in the institution. A person can be a right guy in a clique of four men who are in the hole together, so to speak.

Just like he can be a right guy in the yard in a relatively free situation. So it depends a great deal on his personal qualities, but it can also [22] in some degree depend upon what the situation catapults him into or what the situation enables him to do. I would say he is a person with social skills predominantly.

Q Can press interviews confer on an inmate right guy status that he would not otherwise have?

A No, I don't think so. No, there are inmates who are known as "cradies" or "dings" who are considered unstable, persons of unpredictable behavior or people who are irascible or who are creepy in personality, and I don't know how many times you interview a guy like this, you couldn't convert him into a right guy.

The press cannot confer that kind of status on a person who is lacking those qualities.

Q Now, are press interviews in normal times likely to have a significant impact on the power relationship between the prison administration on the one hand and the inmate leaders on the others?

A No, I don't think so.



Q In your opinion, what influence are press interviews likely to have on the leadership position on the assertive politically militant inmate such as a George Jackson or a Bobby Seales?

[23] A Well, the only thing that might be said about that is that it depends, I suppose, on whether the press is responsible in how it relates itself to those kinds of inmates. And if those inmates have something to say that has merit and substance to recommend itself, then, they would give somewhat wider currency to that.

But if what such an inmate had to say was pure fantasy or paranoid projections or simply silliness, why, then, they can only give currency to that, but it would be seen for what it was. So I would say, to make an analogy, if a militant or assertive prisoner is saying the kind of things about prisons that a responsible warden or a responsible Attorney General of the state would say anyway,—because he is criticizing that which it objectively criticizeable—then it is possible that what the inmate says to the press, gaining currency, could be seen as something that was undesirable to the prison administration, but in my view, if they were responsible prison administrators, they would be addressing those problems and would be volunteering that information himself in order to deal with it.

So, I don't see how the degree of militancy [24] or assertiveness—how that in itself being interviewed by the press can add any new elements, so to speak. A person has to have something to say, and what he has to say has to recommend itself to other people in some kind of a way before it can have any kind of an impact. And if what he says is irresponsible or fantasy—

Q It won't have much impact on his position vis-a-vis other inmates?

A Yes. Or on the prison administration, also.

Q Do press interviews make such—

A Before we go on, I will just cite you one example: When I was the Assistant Warden of the County Jail, a man from the pressroom called me up and said, "I have a discharged inmate here who is telling me some very interesting stories."



And I said, "Yes, what is it?"

"Well, she tells us that the guards are going into the women's quarters at night and having sex relations with the female inmates."

And I said, "Is that so?"

And he said, "Yes." So he said, "What have you got to say about that?"

[25] I said, "Well, print it. You have an informant and she has told you some kind of a story. I am perfectly happy if you go ahead and print that."

Because I was so familiar with the prison and spend so many hours there that I knew it was simply out of the realm of being possible on any kind of systematic basis in which it was reported. I'd doubt very much if it could have been possible on an individual basis.

And so as far as I was concerned, I knew there was an irresponsible story. The pressman had called me up to see and assess that he was being responsible in his own way.

He didn't print it. Now, I don't know if that was an inmate leader or not that had reported that, but as far as I was concerned, I felt I had nothing to hide, and if as a matter of fact that something had happened of that kind, I would have preferred it would have come out, and I could have dealt with it. But I was quite sure it hadn't happened.

Q Well, can or do press interviews make assertive politically militant inmates into leaders when they otherwise wouldn't be?

[26] A No.

Q Can it make himself a leader by having an interview with the press and say these sort of things?

A No. I think I just commented on that a few minutes ago. No, it cannot.

Q I just wanted to clarify that.

When a politically militant inmate does have a leadership position, does his leadership pose a serious threat to the proper administration of a prison?

A No, I think the key to the sentence is "proper;" that is, I think that a prison that has a reasonably adequate staff and resources and is doing its job has nothing

to fear from a responsible press. And as a matter of fact, it ought to view the press as an ally in order to help it get even more adequate resources and staff and be able to deal with its problems.

In short, it is my view that the press in interviews with inmates or interviews with the staff or press investigation of the prison or of the prison administration is in the nature of opening doors that have too long been closed.

[27] One of the reasons that we have gotten to the impasse at corrections and the exacerbation of problems is because the correctional systems have isolated themselves from large segments of the public and have tried to put forward through the control of the communications what are essentially distorted images of the nature of the prison problems. And it is my view that the press can be the greatest ally for the rational improvement of prison administration structure in this country than probably any other single factor.

Q Does the presence within an inmate's population of someone like George Jackson or a Bobby Seals necessarily have a negative impact on the rehabilitation of other inmates, or may it in some circumstances—may the presence of such a man in certain circumstances have a positive impact on rehabilitation?

A I suppose it depends on the kinds of human beings that the prison system wants to produce. If you want to produce persons who are only unfit for a competitive society, who are incapable of curiosity and managing the solution of their own problems, in short, if you are in the business of manufacturing [28] passive personalities, and if that is your view of rehabilitation, then I would say that anything that made inmates more curious, more questioning, more assertive, would be seen as a threat.

On the other hand, in a free and pluralistic society, such as we feel we have in this country, which is based on the ideology of free enterprise and individual effort and so forth, anything that would contribute to giving persons a stronger self-conception of themselves, a sense of dignity and ability to come to more effective grips with the problems in a free community, would be seen as

rehabilitative. So I think a great deal depends on what your orientation is.

My own preference is that persons would be fitted for the kind of free life that they as a matter of fact have to face in the future, and that requires that they have the capacity to make their own decisions and to try to get ahead in a competitive world.

Q And with that view of the goals of rehabilitation, you would say that in some respects, having a politically militant inmate who has influence with other inmates can contribute to rehabilitation, is [29] that a fair conclusion to make?

A It contributes in the same sense in which—you can say that the Bill of Rights of the Constitution is a dangerous instrument because it makes a lot of inconvenience and troubles for a lot of people. But it seems to me that that is what this country is about, and that is you ought to take some degrees of risk; that you ought to have some degrees of freedom; that the critical faculties of people, that their competitive abilities, that their individual ambitions and so forth ought to have some scope for development so that they have the requisite for survival in the free and legitimate community.

And insofar as militancy tends to counteract the many pressures towards what is called institutionalization, the turning of people essentially into passive vegetables in the prison system, I view it as constructive.

Q From a correctional point of view?

A From a correctional point of view.

MR. COOPER: Would you mark this as Mattick Deposition Exhibit 1.

[30] (WHEREUPON, said document was marked Mattick Deposition Exhibit No. 1, for identification, as of 11/9/72.)

BY MR. COOPER:

Q Professor Mattick, I hand you what has been marked as Mattick Deposition Exhibit 1, and ask you whether or not you can identify it for the record?

A Yes. It is an article entitled "The Prosaic Sources of Prison Violence," which was published by the law school from the University of Chicago in a series of occasional papers published by the faculty of that law school.

Q And you are the author of this document?

A I am the author of that document. It was published at the time when I was at the University of Chicago.

Q And what is the subject matter of that article?

A The subject matter of that article is that it tries to shed some light on the processes that contribute to prison violence, and particularly in the wake of the major violence incidents that have [31] taken place in Pendleton Reformatory in Indiana, Raiford Prison in Florida, and the Attica Prison in New York.

Q And what conclusions did you reach as reflected in this article on the prosaic sources, as you call it, the prosaic sources of violence?

A Well, the prosaic sources of prison violence is that contrary to the popular folk wisdom that violence is fomented by prison conspirators, prisoner conspirators or inmate leaders, rather violence grows out of the very natural day-to-day processes of interactions. And by that I mean such things as the slow shift over a period of time of sentencing practices in this country, so that many persons who formerly are sent to residential institutions are now being placed on probation or into a variety of community-based treatment programs like conditional release, work release, vocational training of some kind or another, and that this changed the character of the residual prisoner population over a period of time; that similarly since the period of World War II, that there had been considerable internal migration in this country, which changed the racial composition of the northern cities, as is true [32] of all waves of migration to the cities in the history of this country.

Among those that are the last to arrive are the disproportionate; part of their numbers get into conflict with the law and wind up in prison, and it also changed the character of the prison population over a period of time; that it is not a question so much of a new breed of prisoners being in prisons, which are fomenting trouble

in a way that trouble had never been fomented heretofore, but rather that it was a new mix resulting from these migration waves on the one hand and the change in population as a result of differential sentencing practices. And that had to be combined with the fact that in most prisons, they tend to be located in a relatively rural area, where their staffs tend to be predominantly lower middle class whites, and that most of the prisons serving urban areas have populations that are disproportionately black or representative of minority groups, and that this brings two different styles of life together in kind of a closed situation.

And that therefore, the management of [33] day-to-day affairs becomes a matter of some skill and sophistication. So that in such mundane things as the proportion—the number of prisoners who are discharged every day, that is disruptive of the prison social structure; that if you start a new prison education program and assign a number of inmates to that, which disturbs the internal social structure of the prison.

If you discontinue a prison industry, for example, and redistribute your population internally in a prison, that tends to disrupt the internal social structure of the prison. And that inside the prison, both the inmates and the staff develop very complex and intricate kind of mutual dependent social relations.

Depending upon how you manage the disruption of those relationships, you can prevent violence, if you do that well. But if you do manage the prison without insight into those problems, what appears to be irrational outbreaks of violence are really the consequence of these kinds of routine disruptions that haven't been well managed.

So that if, for example, something that happened in this state back in 1948: They built a [34] new prison, and when it came time to do some of these skilled work of carpentry and plumbing and so forth, they transferred from Menard Penitentiary the 15 most highly skilled industrial inmates that were in that prison structure to help open the new prison. Well, when they did that, there is no telling how many persons were disappointed in the kind of social expectations that it obtained when that

social structure was intact. The people who had been in the habit of getting illicit goods, the people who had been in the habit of being on newspaper delivery chains so that they could get the newspaper down the line from somebody else; people who had been in the habit of communicating between one prisoner and the other, whether that reflected homosexual affairs or whether that simply reflected normal communications, that transfer of those 15 inmates simply raised the level of tension enormously because so many people were kind of at odds.

And an incident occurred in the dining room which ordinarily would have been contained as a relatively routine outbreak of a fracas, but now with the level of tension raised, because of this, it broke into a major riot. And it had nothing to do [35] with leadership; it had nothing to do with a conspiracy. This was simply a kind of a self-prison administration that you could simply disrupt a prison at any time you wanted to with any degree of speed and that it wouldn't have any consequences for you.

Well, they learned the hard way that that is not the way to do it. And that kind of thing happens very often, but it can only be seen in retrospect, and so people say, "I can't understand why the prison blew up. This is only a man who threw a cup across the dining room and hit somebody else in the head and it bursts into a major riot."

That is because something happened last week or three weeks ago, which is only working its way out, and that which happened was something that was quite routine, quite mundane, but it had consequences that it simply did not anticipate.

Those are some of the things I had in mind as the prosaic sources of prison violence. They are not dramatic. They are not revolutionary. They are not the product of rhetoric. They are not the product of conspiracy. They are not the product of individual acts or gratuitous aggression. But [36] rather it is a much more complicated situation.



**Q** What role would you ascribe to inmate leaders and conspiracies in producing violence within your picture of how violence arises?

**A** Well, nothing is out of the realm of the possible, but you can really see a prison community as largely consisting of a double conspiracy; the administration and staff are in a constant conspiracy to keep the inmates in, and there is a constant level of conspiracy on the part of the inmates as to how they can ease their situation and how can they get out.

Now, that is constant in the situation, and that is simply there for a question of management—how do you handle it? Now, over and above that, occasionally you may have somebody that may be very imaginative and has access goods so that he can put together a rope or a ladder or that he can arrange some kind of transportation outside or something of that kind.

But that is not very usual. It is not the thing that contributes to prison violence. It may occasionally contribute to an escape that is well thought through, and it usually reflected somebody's [37] analysis of a prison routine that had a gap in it.

**Q** In your view, do politically militant inmates such as Black Panther types play a significant role in causing violence and disruptions in prisons?

**A** No, I don't think so. I think they do a considerable amount of talking, and there is a considerable amount of hate in the rhetoric, but insofar as the rhetoric is contained behind the 20-foot wall, it doesn't really make much difference what it is that people say inside; if anything, I view it as kind of a form of psychological ventilation, a way of getting a certain amount of heat and energy out in a relatively harmless way.

**Q** Would a press interview in which an inmate expresses violence and engages in revolutionary militant rhetoric result in disturbances or violence within an institution? Would that be a significant causal factor?

**A** It is very doubtful. I think that there are always a number of unstable inmates or not very bright inmates in an institution who would respond, let us say, either



to an aggression on the part of the staff, to an opportunity that was created of [88] some kind in a shop, who might respond to militant rhetoric, who might respond to a loss of a baseball game in today's recreation. But those are all of a piece; those people are likely to be set off anyway because they have a relatively low threshold.

But you couldn't attribute it uniquely to either the fact that there was a militant or revolutionary rhetoric inside the prison or that it was reflected second-hand by an interview with a prisoner that has now come back in the form of a newspaper.

Q If an inmate were in an institution where there may be some racial problems and an inmate—a militant inmate—gives an interview in which he highlights those racial problems, and the report of the interview comes back to the institution, would you say that the interview in that kind of a situation is likely to produce a heightened consciousness of racial problems or greater tension from them than would otherwise exist?

A Maybe as a temporary phenomenon it would occasion considerably more discussion, but it would be very similar to—suppose there had been a spectacular bank robbery in a nearby community that was [89] well reported, or let us say that officials that were publicly appointed or elected officials were caught in some kind of a scheme where there was graft, corruption or misappropriation of funds, that would have certain heightening of discussion and consciousness and so forth.

In other words, I think it is an evanescent thing. I don't think in a racially mixed kind of a situation, particularly inside of a prison, that you would have to have a newspaper to tell inmates that these are racial problems inside the prison. They know about that.

But they will respond on the immediate occasion as they would to these other ranges of events that I mentioned.

Q So, what you are saying, then, if I understand you correctly, is that an inmate group will respond to news events that interest them whether they emanate from a particular inmate in their own institution or perhaps something far away if it attracts their attention?

A They are like the rest of us, except they have a little more time on their hands, and they have kind of a closed situation in which a certain amount [40] of interaction and discussion can take place. And if an event that has some particular interest or is related to the situation in which the prisoners find themselves, that will be discussed; that may cause some flurry of interaction and discussion that may be somewhat more heightened over a period of time, but I think it is an evanescent kind of a thing.

They respond to the news. For instance, let's take an example. When Witherspoon won his case, there was a certain amount of discussion about that. When Leopold was finally paroled, when the California Supreme Court declared the death penalty unconstitutional, I am sure there was a certain amount of discussion.

I think when stop and frisk was passed, I think there was a certain amount of discussion.

Q Are you familiar with the Federal Bureau of Prisons and the institutions it administers?

A Well, I visited a few, and I would say I know more than the next citizen, but I wouldn't consider myself an expert particularly on the Federal prisons, but I have been in Terre Haute several times and I have been in the Federal institution [41] in Springfield because it is a specialized institution.

I know or have known in the past some wardens of some Federal prisons. I know people who are in administrative positions in the Federal Bureau of Prisons, so I have some or more than the average citizen's knowledge of that subject.

Q From what you know about the Federal Bureau of Prisons, do you have any reason to think that the views you have expressed about the leadership among inmates and about the causes of violence or the sources of violence in the prisons would not apply to the Federal prisons; any reason to think that it would not apply to Federal prisons?

A No, I don't think that there would be any reason why it would not apply. I would say that if anything, that the problems of the Federal prisons are considerably

more moderate than those of the state prisons because of the selection of prisoners that are subject to Federal law as opposed to those that are subject to state law.

For instance, murder, assault and rape by and large, except if that occurs on Government property, are state charges, and so you tend to get a greater [42] concentration of persons with a higher violence potential in a state prison, whereas the Federal prisons with the interstate nature of some of their offenses, with the mail offenses, with the Internal Revenue type of offenses, with the organized crime type of offenses. And there is a kind of a white-collar caste to it in that prison population that no state prison population has.

And so I would think that the Federal prison system could tolerate far better many of—what should I call them—many of the measures that frighten an inadequate state prison administration, the Federal prisons, with their greater resources, with their greater openness are to be less frightened of the press in my view.

They have less to fear.

Q From your knowledge of Federal prisons, are there variations in the way individual Federal correctional institutions are administered, or are they uniform?

A Well, I think at the written policy level that the Federal prisons strive for uniformity with administration, but every prison to some degree reflects not only the personality and style and back- [43] ground and training of its chief administrator—if he is a warden or whatever he is. And also to some degree the lifestyle of the region in which the region is located, because although there is a considerable amount of transferring of prisoners inside the Federal prison system, in any one prison, the majority of the prisoners will be from that region.

And insofar as that is reflected in some commonality, that also gives some kind of a distinctive tone or flavor to the prison. And so there is some variation in practice, in behavior and in implementation of policy, but I think that they try to be uniform and even-handed so far as the published works are concerned.

Q In your view, are the dangers of increased tensions and whatnot that might result from differences in indi-

vidual administration of a policy that gave wardens discretions, some discretions as to the granting of interviews, would those dangers be so great as to justify a total prohibition of interviews under all circumstances in the interest of uniformity?

A You mean—I am not sure I understand the question.

You mean if I am willing to agree that [44] uniformity is the chief value—

Q Or should it be?

In your view of appropriate correctional policies, is the value of uniformity such that it is better to have—from a correctional point of view—the policy that prohibits all interviews—

A No.

Q —than a policy which will vest some discretion in wardens to grant or deny interviews so that there will be some variation from one institution to another, such that inmates who are transferred from one institution to another may experience differences in the rights and privileges that they have in various institutions?

A Well, they will experience those anyway, because of the resources of the different institutions, the nature of the guards, staff, and the administrator, because of the nature of the inmate population that they are with, there will be some differences.

I don't see how interviews with the press with inmates occasionally—because I don't expect the press will be there systematically to interview every prisoner every day, but that would [45] a factor to which one ought to attach some significance, that it becomes the reference point for the administration of the prison.

No, I think that is a relatively minor discretion and not only ought to be exercised, but in my view, as I said before, I think that the press has a positive contribution to make by helping to inform and educate the public about the nature of prisons and prison life.

So that the public can come to a greater understanding and some support of what it is that penal administrators are attempting to do in prisons.

Q I just have a couple of final questions.

As you consider the factors that contribute to prison violence and disturbance, what significance would you ascribe to press interviews with inmates in this process?

A Practically none. I don't see it as the significant factor or a factor of any particular significance.

I would say insofar as there is some perceived degree of risk by a penal administration, that they may be nervous about the press on other grounds, that the public interest would be best [46] served if that risk be taken.

Q Okay. Professor Mattick, are you familiar with a volume entitled, "Theoretical Studies in Social Organization of the Prison", published by the Social Science Research Council, 280 Park Avenue, New York 17, New York?

A Yes.

Q Pamphlet 15 and published in March, 1960?

A Yes, I know the publication. I read it. I reviewed it for one of the professional journals some years ago.

I have had occasion to recommend it to students and others in the field.

Q What is your view of the value of the analysis and views put forth in this volume on the matters it covers?

A Well, that pamphlet consists of a series of seven or eight articles, as I recall, and among those authors are among the best minds that have been turned to the analysis of prison administration and inmate social structure of any that this country had produced.

MR. COOPER: Okay. Thank you very much. I have no further questions.

[47]

## CROSS EXAMINATION

BY MR. KATZ:

Q Professor Mattick, have you in the last few years had occasion to visit many penal institutions?

A Yes.

Q Which ones have you visited, say, in the last five years.

A Well, Joliet—the old prison at Joliet, Statesville Penitentiary, the Cook County Jail, the House of Correction, the Audy Home for Juveniles, the Peoria City Jail, the Livingston County Jail, Menard Penitentiary, Springfield, the Federal Institution in Springfield, Missouri—

Q Is that the medical center for Federal prisoners?

A Yes. I spent an entire week at the New Orleans Parish Prison in February of this year as a technical consultant. In the years 1967 and '68, I conducted a survey of all of the jails in the State of Illinois, 160 of them. And although I didn't visit all of the 160 of them, I visited a number that were in the Chicago area.

So I would say I had reasonable exposure [48] to the prisons.

Q In these visits, did you have occasion to talk to inmates at any great length?

A Oh, yes. As a matter of fact, I would not feel that I had an adequate understanding of prisons unless I spoke to both prisoners and the administration.

Q Do you think it is an important consideration in the management of a penal institution that all inmates be treated with an even hand?

A I don't think that in the nature of the case they can. I think it is an ideal that might be striven for, but—for instance, let's say an institution that has a part-time doctor or that has a psychiatrist coming in three days a week or that has a series of counsellors who have a case load of 75 prisoners apiece or a veteran's officer who deals with veterans and so forth, it happens to be the nature of the case that there is some individualized treatment, and that competes with the value of equal treatment as the individual treatment ideal.

Q But you would say that that is an ideal that should be striven for; that is fundamentally equal treatment of inmates without discrimination?

[49] A No, I would say one tempers the other.

Q You would say, of course, that it is also an important consideration in the administration of a prison that security be maintained?

A Yes.

Q I think your testimony thus far has established that by and large, prisons are institutions in which an atmosphere of great tension generally prevails, and there is always a potential for violence, is that not so?

A No. I said it would vary considerably within the institutions. There are institutions that have a relatively relaxed atmosphere and there are those that are highly tense.

I have been in both.

Q Do you feel that a policy with respect to interviews of inmates by the media in which the superintendent or warden of a particular institution is given considerable discretion in deciding whether or not to grant interviews is a wise policy?

A No, I don't think so. I think the policy ought to be uniform; that the press should have access to the prisons and they should have access to the inmates. And if you will accord individual dis- [50] cretion, that those wardens who are either the least comfortable in communicating with the press, or who—maybe in situations that are difficult for them to manage—will exercise the discretion in such a way as to exclude the press.

Q Apart from the situation where the individual inmate himself does not desire to be interviewed, can you think of any situation in which you in a particularized situation, would deny a request by the media to interview an inmate?

A Yes.

Q What would those be?

A If there was a contagious disease rampant in the prison.

Q Anything else besides that?

A It is possible if you were in the middle of some kind of a major disturbance that you would have more important things to do at that moment than being deflected by the press, although—

Q There, you are talking about preventing or precluding interviews to all inmates during—

A I am speaking about emergency situations while it is going on.



I have been through three riots, myself. [51] And in one of the riots I had the press with me while I dealt with it. And the other two, I had them in the reception corridor outside so that I can communicate with them immediately as soon as the situation was under control.

I let the press in to talk to the inmates so that they could see the degree of damage that had been done and as to whether there was any gratuitous whippings or anything of that kind, because I felt it best served me to be open in those conditions, because I knew I was not guilty of any misconduct.

Q Do you feel that there is a possibility that given a situation where a militant type prisoner gives an interview, the result of which is a news story which might be considered inflammatory which works its way back into the prison, is there a possibility that such a situation could lead to some type of violent confrontation?

A That is no different than the free community. In other words, free speech is a dangerous thing, and just as something that might be inflammatory might have some effect in the civil community or the slum community or among some special interest group, there is a possibility that it could also have [52] an effect on a prison population, but it is not a unique function; that is a function of the dangerousness of free speech and a free press.

Q But the possibility does exist?

A Well, I wouldn't exclude any possibility.

Q All right. A while back you spoke of leadership roles which may have been assumed by prisoners resulting from various circumstances, and I think for the most part, we were talking about what you considered positive or affirmative types of leadership.

Now, do you feel that there are inmate leaders whose leadership role is negative in character?

A I think there are those who attempt that and have that kind of character, yes.

Q And do you feel that this phenomenon has been on the increase in the last five years?

A No, I don't think so.

Q Do you feel that assuming the existence of an individual who has been cast in a negative leadership role, do you think that his negative leadership role could possibly be enhanced by attention being given to such a person by the news media?

[53] A It depends on whether the press is responsible in its relationship as to how it reports that. And I think that is something that the prison administrator might take up with the editor or the publisher.

But as I said, if the press reports something that someone said, the fact—it is a fact that he said it. Now, it can also be evaluated as to whether it is true or whether it has any substance or whether it has any merit.

Q Do you feel it would be proper for the prison administration to intercede with the media as to what they should print?

A I think they are entitled as any other citizen to tell the press what they think the role of the press is and as to whether they handled something responsibly, sure.

Q And you don't feel that this might be construed as an attempt of censorship of a form?

A They have a forum every day to reply to me. I have dealt with the press like that all of the time. They are still a free press, and certainly the fact that I might approve or disapprove of certain portions of them. It just means that they are pleased or displeased from day to day, depending on [54] how I respond.

Q Do you believe that at least some prison disturbances which you experienced in the last few years could have been attributed to inmate conspiracies or the influence of persons, inmates acting in a negative leadership role?

A And that's the only cause?

Q No. You stated earlier that it was your feeling that for the most part this was not the case, but do you have any knowledge of instances where this has been the case?

A No. I have no knowledge of that kind. And if someone told me that it was so, it would be highly

suspect, because I don't think that inmate leadership can create that kind of situation. There has to be a substrate of dissatisfactions, of disruptions, or the interests and fortunes of a number of people who feel they have been affected by some policy or by some administrative rule or by some dramatic example of interaction which creates an audience of some kind.

Then, leaders react to that as do persons who are non-leaders, but before you have some kind of disruption rather than some individual kind of [55] aggression, there has to be some commonality, and I don't think you can manufacture things out of whole cloth.

They are relatively complex and relatively large scale events.

Q Are you excluding the possibility that inmates might manufacture a disturbance simply for the purpose of making things difficult for the administration or attempting to overthrow the prison authorities?

A I don't know what you mean by "overthrow the prison authorities," because that is a question of whether you get beyond the walls with what you do. But I do think occasionally that groups of people might create a diversion of some kind because there may be some tactical purpose like an escape, going someplace else, but that is kind of an ad hoc, short-lived, and limited kind of event where they count upon the administration filling the reaction role by responding to the diversion, so if the administration falls into that kind of a thing—that is what I meant by saying sometimes administrators are manipulated by clever inmates.

But a prison administration that knows its [56] business, that has its staff adequately deployed, that has good supervision and has a good program and that kind of thing will almost never have a problem.

Q In other words, you feel that there would almost never be a prison disturbance of any kind in what you consider to be a well-run institution?

A I think a well-run institution would be relatively relaxed and relatively peaceful.

Q And this is regardless of the pattern of radical or militant proclivities of some of the persons confined there?

A Yes. I don't think that makes any difference at all. I think it can be seen in the prisons today. They have a black studies program. They have classes that amount to classes in revolution. They have had the TV cameras in there while the classes are going on. The officers are standing around while the kind of rhetoric that is seriously disturbing the people is going on. The officers were interviewed afterwards and were asked, "How do you respond when you hear all of these people calling you pigs in the middle of their political analysis, and so forth?"

[57] Well, they say, "We didn't like it, but after all, they are behind the walls."

And that depends a great deal on training and enabling officers to handle what might be a distressful situation without that kind of training.

Q Do you feel that the values which you have stated would be served by media access to penitentiaries i.e., a public awareness of what goes on down there and so forth could be equally or almost equally adequately served by a policy which while it would not permit private interviews with inmates, it would nevertheless allow generally unrestricted visits of media people to institutions coupled with free and uninspected correspondence privileges between prisoners and the media?

A No, I don't think so. I think our entire Government is founded on kind of a suspicion of authority, and I think that is very healthy, and I think that is one of the major roles of the free and responsible press, which is to keep authority responsible.

And individual communications or unrestricted visiting trends to kind of individualize communications and focus on personal problems whereas the most serious [58] problems in corrections in prisons are systematic, and for that you have to have a relatively disinterested view that it takes to look at the overall view in attempting to be analytical about it.

Most people who are inside of a situation are so caught up in the day-to-day affairs that they are incapable of rising above it in such a way that they can become analytic and to be able to understand it in such

a way as to think of alternatives and so forth and so on; that is, no matter how adequate, for instance, a judiciary we might have to respond to prisoners grievances on an individual basis, it would be my view that while that would contribute to some degree to some aspect of penal reform, it would do very little about the prison situation, because for that, you have to have a larger view than the individual case, and so I don't think that that would be adequate.

I think that the press has a definite and positive role to play in penal administration and that it is largely because of its exclusion in the relative isolation of the prison systems of this country that we have such difficulty in trying to deal with the problem.

[59] Q Well, the question I asked, Professor, though, did not presuppose exclusion of the press as such. I posed the situation where press representatives are allowed to visit prisons regularly and to walk around and to see what goes on, and to have free written communication with inmates.

Do you feel that it is indispensable for the media to discharge its role that you feel it should discharge; that they be allowed to have private confidential interviews, face to face interviews with inmates, or do you feel that—

A Prisoners being willing on a voluntary basis?

Q Yes.

A Yes. I think it is essential. I think it is very much like the legal profession, for example. The legal profession has an ethics committee and a malpractice committee and so forth, and from the outside, that is viewed pretty much with jaundiced eyes by the public. They say those people are judges in their own cause, there is not an outside uninterested party.

The same is true of the medical profession. Any time that a group becomes the judge in its own [60] cause, the result of that cannot help but be suspect, and for that reason, the press plays the role of the third party for the public in such a way—and while I would not say that the press is always objective, I wouldn't go that far, or that it doesn't have a point of view, never-

theless it predominantly plays that role and it ought to play that role, and especially in closed situations like mental hospitals, like prisons, like orphanages, juvenile institutions, so that you can finally get some ventilation and public understanding.

Without that kind of thing, you have a perpetually astounded public that wonders how can these things happen? Here we thought our tax money was doing this and that and the other thing, and here we thought that adequate people were here, here we thought that every prison had a psychiatrist that was treating people, here we thought that they had a doctor and nurse in the institution, and come to find out through some inadvertence, or because there is a suicide or something of that kind, that the situation is really much more impoverished than the people thought it was.

Q Could not this type of information be (61) communicated in writing between prisoners and the media just as well as in face-to-face interviews?

A Well, I don't think so. I think that the degree of articulateness and writing ability would probably make for a selection of prisoners in favor of those that were more literate and more in the middle class kind of direction and so forth. It would leave an important point of view unexpressed.

But a prison situation in which inmates were free to assist other inmates in writing—

A We are straining. We are straining. If you are seeking to make some kind of one in 10,000 kind of exception, I will give you that. But if you are interested in my opinion, the question is that by and large it is far more preferable than the press play an active role of oversight and investigation and communication and information and education with reference to penal institutions.

MR. KATZ: Off the record.

(WHEREUPON, discussion was had off the record.)

BY MR. KATZ:

Q During the time that you were actively employed in prisons, were there any policies in effect [62] at that time with respect to media access?

A Well, let me say that in the prison in which I was able to control that policy, it was.

Q This was in the Cook County Jail?

A Yes. It had absolute free access. As a matter of fact, I committed newsmen anonymously into the prison cell blocks, and that condition was not known to other prisoners—who they were—or to my employees. And I gave them a free hand to write whatever they wanted to write, because I was interested in communicating that problem to the public.

Q And you were the Deputy Warden at that time during that period?

A Yes.

Q Who was the Chief Warden?

A Well, we had two of them, but we had an understanding with the Sheriff that I was the person who was technically competent, so I ran the jail. The Warden was the person that dealt with other agencies and dealt with the outside public in a certain way, but with what went on in the jail—nothing could happen in that jail that I didn't approve of.

[63] MR. KATZ: Thank you. That is all I have.

MR. COOPER: Just one question.

## REDIRECT EXAMINATION

BY MR. COOPER:

Q Your policy of allowing the press freely into the Cook County Jail, did that cause you any problems? Was that a satisfactory policy in your experience with it?

A It was satisfactory. What was unsatisfactory about it is that I couldn't drag any of those people into the jail. They ate my food every day in the Warden's dining room, but I said, "For God's sake, get into those cell blocks and talk to the prisoners."



And they said, "Oh, you know, it smells and this and that." They were reluctant to go in. But any time they wanted in, I was more than happy to have them.

MR. COOPER: Thank you.

There is just one thing I want to explain to you: You are entitled to see a copy of this and sign it and make sure it is accurate. [64] In most cases witnesses assume that the reporter took it down correctly and they waive the formality of signature.

You could have the option. You can make the decision whether you want to see it to make sure that he took down everything that you said accurately.

THE WITNESS: Now, let me ask both sides: Is there an important fine factor in this matter where the delay of the reproduction—

MR. KATZ: We will waive signature.

MR. COOPER: We are entitled to signature, too, and we will both waive it.

THE WITNESS: But I will get a copy in any case?

MR. COOPER: I will make sure you get a copy.

THE WITNESS: All right. But I would like to have a copy.

MR. COOPER: I will send you a copy.

THE WITNESS: All right. I won't insist on signing it first.

(AND FURTHER DEPONENT SAITH NOT.)

[65] )  
 STATE OF ILLINOIS )  
 COUNTY OF COOK ) ss.

I, TERRY KUPPERMAN, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, do hereby certify that heretofore, to-wit, on the 9th day of November, A.D., 1972, personally appeared before me at Room 4060, 618 South Morgan Street, Chicago, Illinois, HANS MATTICK, a witness in a certain cause now pending and undetermined in the United States District Court for the District of Columbia, wherein WASHINGTON POST CO., et al., are Plaintiffs and RICHARD KLEINDIENST, et al., are Defendants.

I further certify that the said HANS MATTICK was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by said witness was reported stenographically by me, in the presence of the said witness, and afterwards reduced to typewriting, and the foregoing is a true and correct transcript of the testimony so given by said witness as aforesaid.

I further certify that there were present at the taking of this deposition MR. RICHARD M. COOPER on behalf of the Plaintiffs and MR. MICHAEL A. KATZ on [66] behalf of the Defendants.

I further certify that the signature of the witness to the foregoing deposition was waived by agreement of counsel for the respective parties.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor am I in any way interested in the outcome thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 18th day of November, A.D., 1972.

/s/ Terry Kupperman  
 Notary Public, Cook County,  
 Illinois

My commission expires 7-29-78.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 467-72

WASHINGTON POST CO., ET AL., PLAINTIFFS

v.

RICHARD KLEINDIENST, ET AL., DEFENDANTS

STIPULATION

Plaintiffs and defendants, by their undersigned counsel, hereby stipulate that the following corrections be made in the transcript of the deposition of Hans W. Mattick:

p. 6, line 20	for "privisory" read "advisory"
p. 10, line 10	for "a" read "as"
p. 10, line 14	delete "been"
p. 10, line 20	for "molto" read "major"
p. 11, line 5	for "administer" read "administered"
p. 12, line 11	for "inactive" read "and active"
p. 13, line 35	for "parents" read "talents"
p. 19, line 15	for "opposes" read "poses"
p. 21, line 20	for "click" read "clique"
p. 22, line 18	for "present" read "prison"
p. 22, last line	for "Seals" read "Seale"
p. 27, line 14	for "Seals" read "Seale"
p. 29, line 12	for "or" read "for"
p. 33, line 3	for "proportioned" read "proportion"
p. 37, line 9	for "beyond" read "behind"
p. 38, line 6	for "contribute" read "attribute"
p. 38, line 13	for "they" read "there"
p. 38, line 19	for "of them" read "from them"
p. 39, line 11	for "they" read "there"
p. 41, line 12	for "forces" read "sources"
p. 42, line 4	for "male" read "mail"
p. 46, line 20	for "in" read "to"
p. 53, line 19	for "form" read "forum"

p. 54, line 18  
 p. 55, line 19  
 p. 56, line 1  
 p. 56, line 10  
 p. 56, line 15  
 to p. 57, line 2

for "effected" read "affected"  
 for "great action" read "reaction"  
 for "employed" read "deployed"  
 for "platform" read "pattern of"

p. 57, line 12  
 p. 57, line 14  
 p. 58, line 12  
 p. 58, line 16  
 p. 59, line 20  
 p. 62, line 5  
 p. 62, line 11

Professor Mattick stated during the deposition that he thought the program and the interview with the guards described here occurred at a prison in Canyon City, Nevada  
 delete "one"  
 for "unaffected" read "unexpected"  
 for "prisons" read "prisoners"  
 for "of" read "than"  
 for "justice" read "jaundiced"  
 for "absolute" read "absolute"  
 for "communication" read "communicating"

An additional copy of this Stipulation is attached for insertion after the cover page of the deposition.

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**RICHARD M. COOPER**  
 Attorney for Plaintiffs

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**MICHAEL A. KATZ**  
 Assistant United States Attorney  
 Attorney for Defendants

November 29, 1972

ATTACHMENT

District }  
of }  
Columbia } 221

I, Norman A. Carlson, being duly sworn, do hereby certify that I am Director of the Federal Bureau of Prisons. As Director, I am responsible for the development and promulgation of the policies which govern the operation of the various institutions which comprise this Bureau.

In a recent affidavit submitted to this Court, I noted that the Bureau of Prisons was considering a revision of its Policy Statement 1330.1, which regulates contacts between federal inmates and institutions, and the news media. The revision has been undertaken in order to accommodate, in my judgment, two prevailing considerations: the communication of inmate grievances, complaints, and stories to the press; and the right of the public to know, through press coverage, of what is going on in correctional institutions. At the same time, we recognize that all correctional operations and programs must insure, to the greatest extent possible, the security of the institutions and the safety and well-being of inmates and staff members.

In response to these factors, a policy revision to permit inmate interviews was drafted. This revision was reviewed and commented on by the chief executive officers of all federal institutions. This past week, it was discussed by my administrative staff with the wardens of nine major adult institutions at a conference in Washington. This policy area was also a subject of discussion with over 40 state correctional administrators at a recent conference in Atlanta, Georgia, and it was reviewed with officials in the Department of Justice having a particular interest in this field.

Based on these discussions, I am of the opinion that personnel interviews with the press will cause an undue strain upon the facilities of most federal institutions. In addition, they would divert staff from their primary responsibilities relating to programming and security, with the consequence that these two areas of responsibility would be adversely affected.

The conduct of press-inmate interviews has been discussed with state correctional administrators, including many from those states listed by plaintiffs in support of their complaints. We learned that, in many states, the interviews are permitted at the discretion of the local wardens and superintendents, with virtually no guidance or standards. We felt that such state practices and experiences offered therefore no guidance, and that the possible consequences in such instances would be uneven application. One large state which had adopted system-wide standards has now returned to a policy of no interviews in view of difficulties arising from their previous policy.

We are nonetheless, as previously stated, of the opinion that prisoners and press should have a reasonable opportunity for exchange.

In the course of the policy review, it became apparent that these considerations could be accomplished by another means, i.e. sending all inmate correspondence sealed and unopened directly to the press and subjecting incoming to inspection only. Outgoing correspondence procedures will be accomplished by authorizing inmates to use the Prisoners Mail Box system for this purpose. Under this system mail is sealed and deposited in

special boxes. Envelopes deposited therein are collected daily, and forwarded unopened to the addressee. This is precisely the means which inmates have for sending sealed communications to the courts, Senators and Congressmen, and to various officials in the executive branch of government. The availability of this correspondence is made known to all inmates, and it is used extensively.

At the same time, we will permit press representatives to send mail to any inmate they choose. Matters initiated by inmates can be pursued in this manner and questions can be posed to the inmate, without limitation. Since we are primarily concerned about what comes into the institution, this incoming correspondence will be inspected, but only for contraband (drugs, weapons, and money, for example) and for content which incites illegal activity (escape and riot, for example). // it's  
NAD

We encourage all media representatives to visit our institutions, to observe, and to report their findings.

These objectives and changes in policy have been incorporated in Policy Statement 1220.1A, a copy of which is attached. It permits inmates, without limitation as to frequency, volume and subject matter, to send all information, complaints, and grievances they wish to any media representative, as defined in the policy statement, whom they name. It permits incoming correspondence from the press, with the minimum amount of restriction, as required for the security and safety of the institution. It encourages



the press to inform the public about corrections, not just in abstractions, but by visiting institutions, talking with staff and inmates, and discussing programs, activities, and problems with them.

*Norman A. Carlson*  
 NORMAN A. CARLSON, Director  
 Federal Bureau of Prisons

Subscribed and sworn to before me this 15 day, of February 1972.

*Henry D. Lundy*  
 NOTARY PUBLIC

My Commission Expires Feb. 15, 1974

STATISTICAL DATA REGARDING THE NUMBER OF FEDERAL PRISONERS IN BUREAU  
OF PRISON INSTITUTIONS IN THE FOLLOWING CATEGORIES:

	As of October 23, 1972				Average Hospital Patient Load
	Total Confined	Unsen- tened	On Parole	On work or Study Release	
<b>Total . . . . .</b>	<b>21,930</b>	<b>697</b>	<b>386</b>	<b>189</b>	<b>891.9</b>
<b>MAXIMUM SECURITY INSTITUTIONS<sup>1</sup></b>					
Atlanta . . . . .	2,118	2	-	2	25.3
Leavenworth . . . . .	1,940	2	-	6	23.0
Marion . . . . .	319	-	-	-	8.3
Lewisburg . . . . .	1,478	3	-	14	8.7
McNeil Island . . . . .	894	-	-	3	9.6
Terre Haute . . . . .	1,360	-	-	2	9.3
<b>MEDIUM SECURITY INSTITUTIONS<sup>2</sup></b>					
Ashland . . . . .	318	9	6	-	1.1
Sanbury . . . . .	727	35	3	4	3.3
El Reno . . . . .	991	8	-	1	9.8
Englewood . . . . .	332	17	26	-	1.0
La Tona . . . . .	756	1	1	1	3.0
Leopold . . . . .	1,017	17	-	3	13.1
Miles . . . . .	404	31	28	6	2.0
Petersburg . . . . .	384	8	11	3	2.9
Sandstone . . . . .	329	-	-	-	2.3
Tallahassee . . . . .	383	2	2	-	9.3
Terminal Island (Male) . . . . .	721	27	31	1	2.7
Terminal Island (Female) . . . . .	334	8	3	1	-
Tenahane . . . . .	386	4	4	2	0.9
<b>MINIMUM SECURITY INSTITUTIONS<sup>3</sup></b>					
Alderson . . . . .	342	32	-	3	10.3
Allenwood & Lewisburg Farm . . . . .	277	-	3	3	-
Elgin Camp . . . . .	429	-	31	23	1.9
Leavenworth Camp . . . . .	226	-	6	-	-
Leopold Camp . . . . .	322	-	-	4	-
McNeil Island Camp . . . . .	246	-	2	2	-
Montgomery . . . . .	243	7	6	-	1.2
Morgantown (Male) . . . . .	139	5	16	8	-
Safford Camp . . . . .	273	-	-	13	0.3
Seagoville . . . . .	423	-	63	2	2.8
Marion Camp . . . . .	81	-	-	-	-
Morgantown (Female) . . . . .	43	2	2	-	-
Ft. Worth (Male) . . . . .	340	17	44	6	2.2
Ft. Worth (Female) . . . . .	68	3	6	3	-
<b>DATA</b>					
Pierence . . . . .	214	83	-	1	-
New York . . . . .	337	207	-	-	3.9
<b>HOSPITAL</b>					
Springfield (Hospital & Camp) . . . . .	992	138	-	7	700.1
<b>COMMUNITY TREATMENT CENTERS</b>					
Atlanta . . . . .	29	1	-	-	-
Chicago . . . . .	41	6	-	-	-
Detroit . . . . .	23	3	-	-	-
Houston . . . . .	29	6	-	-	-
Kansas City . . . . .	30	6	-	-	-
Los Angeles . . . . .	107	1	-	-	-
New York . . . . .	32	3	-	-	-
Oakland . . . . .	24	1	20	1	-

1. **MAXIMUM SECURITY INSTITUTIONS** are designed for the containment of individuals who constitute the greatest security risk and threat to society. Such institutions have a high wall or detaining fence equipped with manned gun towers which constitutes the security perimeter.
2. **MEDIUM SECURITY INSTITUTIONS** are designed for the detention of less serious security risk inmates. These double detaining fences and full-time employee surveillance constitutes the security perimeter.
3. **MINIMUM SECURITY INSTITUTIONS** have no gun towers and no detaining fence. Supervision and established boundaries constitute the perimeter.
4. **Work Farm and/or Camp.**

904 12/12



[illegible][illegible]

# A Model Act for the Protection of Rights of Prisoners

COMMITTEE ON THE MODEL ACT  
FOR THE  
NATIONAL COUNCIL ON CRIME AND DELINQUENCY

1972.

NATIONAL COUNCIL ON CRIME AND DELINQUENCY

## § 7. VISITS TO PRISONERS AND INSTITUTIONS

1 The director of a department responsible for the operation  
2 of an institution or a system of institutions for the confinement  
3 of prisoners shall establish rules and regulations permitting  
4 attorneys of record, relatives, and friends to visit and talk  
5 in private with any prisoner in an institution at reasonable  
6 times and under reasonable limitations. The institution may be  
7 visited at any time by members of the state legislature, judges  
8 of the criminal or appellate courts, the attorney general, and  
9 the governor.

10 Any other citizen may make application to visit an institu-  
11 tion and talk in private with prisoners if the applicant estab-

12 lishes a legitimate reason for such visit and if the visit is not  
13 inconsistent with the public welfare and the safety and security  
14 of the institution. The director may reject any such application  
15 if the visit or any aspect thereof would be disruptive to the  
16 program of the institution.

17 If application for a visit is denied, the person may apply  
18 to [court of general jurisdiction] for an order directing the  
19 head of the institution to permit the visit. Such order shall  
20 be granted after notice and hearing if it is found that (a)  
21 the person is a representative of a public concern regarding the  
22 conditions of the prison, (b) he is not a mere curiosity seeker,  
23 and (c) it is not established by the head of the institution  
24 that the visit, or any aspect of it, would disrupt the program of  
25 the institution.

620

ADAMS B. STANTON, JR.  
Executive Director

JOHN WALTER H. MURPHY  
Director, Bureau of Corrections



STATE OF MAINE  
DEPARTMENT OF MENTAL HEALTH AND CORRECTIONS  
ANSONIA, MAINE 04910  
TEL. (207) 533-3131

*h/c/ps*

October 8, 1978

Mr. Joseph A. Gelfano, Jr.  
Williams, Gonnolly & Gelfano  
1000 Hill Building  
Washington, D.C. 20006

Dear Mr. Gelfano:

In regards to your letter of September 27, 1978 enclosed please find a copy of our Policy governing access of news media in our correctional institutions. We trust this will be of some assistance to you.

Very truly yours,

*John W. H. Murphy*  
JOHN WALTER H. MURPHY  
Director  
Bureau of Corrections

WJM/j  
Enc.

## STATE OF MINE

## BUREAU OF CORRECTIONS

Policy Statement  
November 20, 1971

Superintendents and Administrative Staffs

Miss Ward N. Murphy, Director of Corrections

SUBJECT: POLICY GOVERNING ACCESS OF NEWS MEDIA

In the interest of the public, the various institutions, and the staff and inmates of these institutions, it is imperative that open lines of communication be made available between the accredited news media and those involved in the entire operational process. To assist in meeting this objective, the following is established as a policy of the Bureau of Corrections, effective January 1, 1972:

1. Any representative of the news media shall submit a written request to the Superintendent or Warden of the institution concerned, identifying the news organization represented; the subject, event, or individual to be covered. Any news coverage or interviews shall take place during the regular visiting hours at the institution or by appointment at any other time.
2. Requests for access to individual inmates will be granted only when the inmate concerned has given his written consent.
3. Any equipment, including but not limited to cameras or recording device, shall be subject to inspection at the time of entering the institution.
4. In all cases, coverage or access shall be promptly arranged, following the above procedure, unless the Superintendent or Warden recommends that coverage or access be denied.
5. Denial of news coverage or access may be made only by the Director, Bureau of Corrections. In those situations where the Superintendent or Warden considers that the news coverage or access will compromise the security of the institution or the safety of its inmates or its staff, he shall recommend to the Director, Bureau of Corrections that news coverage or access be denied. A request for news coverage or access will not be denied for the sole reason that the inmate sought to be interviewed is an unrepentant offender. Recommendations for denial shall be documented, annexed to the letter of request, and forwarded to the Director, Bureau of Corrections for determination.

/s/ Ward N. Murphy

WARD N. MURPHY  
Director, Bureau of Corrections



STATE OF OHIO



## DEPARTMENT OF REHABILITATION AND CORRECTION

1744 MORRIS ROAD, COLUMBUS, OHIO 43267

(614) 466-6170

JOSEPH A. GILFILLAN - DIRECTOR  
 DIRECTOR J. GILFILLAN - DIRECTOR

October 1, 1978

Mr. Joseph A. Gilfillan, Jr.  
 William, Connolly and Gilfillan  
 1000 Hill Building  
 Washington, D. C. 20006

Dear Mr. Gilfillan:

I am in receipt of your letter of September 27, 1978 regarding the policy of this Department with respect to interviews by the press of inmates in correctional institutions.

Let me begin by saying that it is the policy of the Department to permit such interviews. Attached hereto is a copy of our Administrative Regulations pertinent to this subject, which sets out in detail when interviews are permitted and when they are not. You will note that on the one hand the regulation is quite liberal, while at the same time it does provide for denying requests for interviews under certain circumstances. These circumstances are set forth directly in security and I am sure that you can appreciate this. In short then, we believe that the correctional institutions should be open to the public and the press, except under certain circumstances. We have found this practice to be beneficial to all, as it serves an important educational function in bringing to the attention of the public the needs of the criminal justice system. There are, of course, certain problems that arise with such a policy, but these problems are far outweighed by the benefits they produce.

At this point in time, it would be mere speculation to project how many interviews have been conducted (the new policy has been in effect since August 7, 1978). I do not think the burden has been heavy on our institution administrators, as few complaints have been registered.

As to the questions you raised in your letter concerned itself with any (if any) that have arisen in connection with such interviews. The problems we have faced in the inaccurate and often non-objective reporting that takes place. All too often the facts are not thoroughly investigated with the result being a one-sided story, giving false images of the system. Recently an inmate began writing to a major newspaper in one of

Mr. Joseph A. Califano, Jr.  
Washington, D. C. 20008

October 4, 1972

our office regarding certain alleged incidents that allegedly occurred at the institution he was incarcerated in. The result was front-page stories depicting a cruel and sadistic environment. The inmates at this institution became very concerned about the articles and made their concern known to the administration. What the end-result produced was great detriment to the rehabilitative programs at the institution and embarrassment to the inmate body.

I am also enclosing a copy of the Ohio Citizens' Task Force on Corrections Final Report, which will give you an idea of public awareness regarding the correctional system. Many of the recommendations contained in that report are now being implemented by this Department.

I hope I have been somewhat helpful to you in your preparation for trial and wish you the best. If I can be of further assistance to you on this or other matters, please do not hesitate to contact me.

Very truly yours,

*Bennett J. Cooper*  
Bennett J. Cooper  
Director

BJC:Wim  
enclosures

STATE OF OHIO

## DEPARTMENT OF REHABILITATION &amp; CORRECTION

Page 1 of 2

ADMINISTRATIVE REGULATION NO.  
SUBJECT: NEWS MEDIA VISITS  
AND INTERVIEWS

2. It is the policy of the Department of Corrections to permit visits by representatives of the news media to correctional institutions, when approved by the Managing Officer of the particular institution or his designee.
3. Requests by representatives of the news media for permission to visit an institution shall be granted unless the Managing Officer or his designee determines that such a visit would constitute a clear and present danger to institutional security, would unnecessarily interfere with the orderly administration of the institution or would endanger the safety of the reporter or reporters.
3. The Managing Officer or his designee may place reasonable restrictions on the number of reporters allowed in the institution at any one time and on the duration of their visits.
4. Arrangements for the taking of pictures must be made in advance with the Managing Officer or his designee. Pictures of specific inmates may be taken only after securing clearance from the Managing Officer or his designee and only after the inmate to be photographed has expressed his approval by signing the Inmate Consent Form.
5. Personal Interviews of Specific Inmates
  - A. Personal interviews, either filmed or unfilmed, of inmates by representatives of the news media must be approved in advance by the Managing Officer or his designee, the inmate to be interviewed, and the inmate's attorney-of-record if the inmate has any pending legal action. The inmate's consent (and his attorney's consent, if required) must be evidenced by his signing of the Inmate Consent Form.
  - B. Subject to prior approval of the Managing Officer or his designee, a member of the news media may interview more than one inmate at the same time, and, also subject to prior approval by the Managing Officer or his designee must base his decision to allow such interviews on the criteria listed in subsection C below.
  - C. The Managing Officer or his designee shall, if space is available for the interview, grant permission for an interview unless he determines either:
    1. the effects such an interview would have on the inmate and his personal mental attitudes;
    2. the effects it would have on other inmates;

Revised 8/72

## STATE OF OHIO

## DEPARTMENT OF REHABILITATION &amp; CORRECTION

Page 2 of 2



DEPARTMENT OF REHABILITATION & CORRECTION  
JOHN J. COOPER - DIRECTOR

3. the effect of such an interview with respect to any pending legal action or review by the Adult Parole Authority;
  4. that the interview would present a clear and present danger to the security of the institution, or security of the reporters; and
  5. that the interview would seriously disrupt the orderly administration of the institution due to the number of correctional officers needed during the interview to provide sufficient security for the security of the institution or the reporters.
- D. The Managing Officer or his designee may place reasonable restrictions on the frequency, length and starting time of personal interviews. The institution may visually monitor such interviews to assure the reporters' safety, but in no case may such interviews be verbally monitored without the approval of all parties involved in the interview.
- E. Any inmate or newsmen aggrieved by an adverse decision of the Managing Officer or his designee concerning personal interviews may appeal the decision to the Director or his designee. The Director's decision and his reasons therefor shall be promptly communicated to the Managing Officer and all appealing parties.
- F. If an institution is placed under a state of emergency, representatives of the news media will be allowed access only to those areas that are designated safe by the Managing Officer or his designee. During the existence of a state of emergency, the Departmental Communications Officer or his designee shall periodically, and in no case less than once daily, inform the news media of the situation within the institution.

BUREAU OF PRISONS

WASHINGTON, D. C. 20037

# Policy Statement

SUBJECT: PRISONER'S MAIL BOX

Classification No.
7300.2A
8-7-72

1. PURPOSE. This statement of policy is to update and revise the current procedures pertaining to the operation of the Prisoner's Mail Box.

DIRECTIVE. This Policy Statement supersedes Policy Statement 7300.2A, dated December 28, 1967.

POLICY. It is the policy of the Bureau of Prisons to provide all inmates in Bureau institutions the opportunity to write government officials who are not immediately responsible for their care, custody, and correction. All letters mailed through the Prisoner's Mail Box procedures will be neither opened nor inspected. All inmates may utilize this process to write to officials specified below to discuss any problem or situation which they feel cannot be solved with the assistance of institutional personnel or by the use of normal mail channels.

Inmates may address letters through the Prisoner's Mail Box to: the President and the Vice-president; the Attorney General; Director, Bureau of Prisons; Office of General Counsel and Review, Bureau of Prisons; members of the United States Board of Pardon; the Pardon Attorney; the Surgeon General, U.S. Public Health Service; the Secretary of the Army, Navy and Air Force; United States Courts; members of the U.S. Senate and House of Representatives; and representatives, specified by name or title, of the news media (as defined by Policy Statement 1220.1A).

State prisoners that are housed in Bureau institutions will be permitted to utilize the Prisoner's Mail Box to correspond with state officials concerning their problems. Letters to Governors, Attorneys General, Director of Departments of Corrections and sentencing Judges will be forwarded in accordance with standard procedure outlined in this policy statement.

## 4. OPERATIONAL PROCEDURES

a. (1) Description. The Prisoner's Mail Box will be placed in a central location or locations readily accessible to the inmate population. Each mail box will be plainly marked and a statement of purpose will be posted indicating a list of persons to whom mail may be sent. The statement will also indicate that matters which should be taken up with institution officials will normally be returned to the institution for disposition. The inmates' original letters will be returned with their responses from General Office personnel.

(2) The notice placed on each mail box will also include the following statement:

Page 2  
1400, 2A  
B-7-17

"The contents of all correspondence placed in this box are the responsibility of the individual writer. Any material which violates postal laws or regulations, i.e., is obscene or lewd or contains threat of bodily harm, involves extortion or libel, includes contraband, or is intended to facilitate escape from legal custody may result in prosecution in a Federal Court."

- (3) The above statement will be translated into Spanish to advise the large number of Spanish speaking inmates in our care.

- b. Collection: A designated institutional staff member will collect the contents of each Prisoner's Mail Box on a daily basis, Monday through Friday. All mail addressed to the Bureau will be forwarded each day in an envelope plainly marked, "Prisoner's Mail Box."
- c. Identification of Mail: Inmates will not be required to place their name or any identifying mark on the envelopes but will be requested to address all mail as legibly as possible.
- d. Letters to Central Office: All mail addressed to members of the Central Office staff of the Bureau of Prisons will be forwarded with other Prisoner's Mail Box letters, but only the Director's name is to be placed on the notice posted with the mail box.
- e. Letters to the U.S. Courts: All mail addressed to the U.S. Courts shall be separated from other Prisoner's Mail Box letters and forwarded directly to the addressee, but with the envelope stamped as directed in paragraph "h" of this policy statement.

Mail addressed to the U.S. Attorneys, U.S. Probation Officers and Clerks of the Court will be forwarded to the addressee, but the notices posted above the mail box will be limited to U.S. Courts.

Legal documents such as petitions for writs of habeas corpus, motions to vacate sentences, requests for trial records, etc., will be processed as Special Purpose correspondence as provided for in Policy Statement 7300.1A dated March 16, 1972.

- f. Letters to Members of Congress: All mail addressed to members of Congress will be separated from other Prisoner's Mail Box letters and be forwarded directly to the addressee but with the envelope stamped as directed in paragraph "h" of this policy statement. Letters to members of Congress will be sent to their Washington address and each institution will insure that a current Congressional Directory is available for ready reference by all inmates. Letters addressed to persons that you are unable to identify as members of Congress or letters which pose other unusual problems, will be forwarded to the Bureau for disposition. All inmates will be instructed that multiple letters to several members of Congress are likely to be less effective than will one letter to the Congressman of his choice. Follow-up letters are normally unnecessary and should not be written in less than one month. Letters to members of Congress may be sent as "Special Purpose" mail if the inmate so desires.

k. Registered Letters. Inmates will be allowed to send letters through Prisoner's Mail Box procedures as registered, certified, or special delivery if they so desire and at their own expense. In order to do so they must identify themselves by name and register number as the proper procedure for handling mail of this type can be followed. Of course the letters may be mailed only to individuals authorized on the notice on the Prisoner's Mail Box. The letter will still remain sealed and will be processed in accordance with each institution's procedures for the handling of registered mail. The handling of Commissary Form #24s will be consistent with the procedures outlined in Policy Statement 13263.

l. Transmittal Stamp. Each institution will have a stamp made that includes the following statement: "The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another address, please return the enclosure to the above address."

This revised procedure will eliminate the stapling of the old transmittal slip to the inmate's envelope and eliminate the cost and time factor of readdressing another envelope. This message is to be stamped directly on the back side of the inmate's original envelope.

It is imperative that this message be stamped in a clear and legible manner on each envelope. An example of this stamp is shown on attachment 1.

m. ACTION REQUIRED. The procedures outlined above become effective immediately. Institution policy statements relating to Prisoner's Mail Box should be amended in accordance with these procedures and a copy sent to the Assistant Director, Institutional Services.

*Norman A. Carlson*

NORMAN A. CARLSON  
Director, Bureau of Prisons  
Commissioner, Federal Prison Industries, Inc.



629

Attachment 1  
7300.211  
N-7-

EXAMPLE OF TRANSMITTAL STAMP ON BACK  
"SIDE" OF ENVELOPE

PO BOX 500  
STELLACOOM, WASHINGTON 98388

DATE \_\_\_\_\_

The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address.

BUREAU OF PRISONS

WASHINGTON, D. C. 20537

## Policy Statement

7300.4A

SUBJECT: VISITING REGULATIONS

4-24-72

1. POLICY. In order to achieve the main objective of the Bureau of Prisons-- correction of the offender--it is essential that the individual offender develop and maintain healthy family and community relationships. Due to the difficulty in fostering positive relationships in a penal or correctional setting, visits by family and community groups are to be stressed as an important factor in maintaining the morale of the individual offender and motivating him toward positive aspirations. Visits are to be utilized as opportunities for developing closer relationships between the staff, family members, and community groups for the purpose of more effective program planning. Visits should be conducted and supervised in a manner which will contribute to good public relations, to a better understanding of the institution's program, and to a better understanding of the overall mission of the Bureau.
2. PURPOSE.
  - a. To provide updated information pertaining to visiting regulations.
  - b. To standardize the format for Policy Statement issuances.
3. DIRECTIVES AFFECTED. Policy Statement 7300.4 Manual Bulletin No. 376), Visiting Regulations dated 7-1-49, is rescinded.
4. VISITING REGULATIONS. Because of the practical considerations and because of the nature of correctional institutions, certain limitations must be recognized and controls established in developing and administering visiting regulations. The size, mission, locations, and other variables will indicate the limitations which must be recognized and the controls necessary in each facility. Each institution shall develop the procedures and regulations required to administer the Bureau's visiting policy. The practical considerations which demand controls upon visits include the limitations of visiting space, the time and administrative expense incident to arranging and supervising visits, and the need for maintaining other institutional activities without unnecessary or extended interference. The extent of these limitations will vary with each institution, and they should be recognized as the only reasons upon which restrictions on visiting should be based.
5. GUIDELINES.
  - a. Visiting Facilities  
The visiting room should be arranged to provide adequate supervision, adapted to the degree of security required by the type of population. It should be as comfortable and pleasant as possible, and informally arranged. Appropriate furnishings (e.g., small tables and chairs, settees, and other less formal furniture arrangements) are preferable to the

"unconventional" prison visiting table. This is particularly true in institutions for juveniles, reformatories, correctional institutions, and camps, but may apply to penitentiaries, except where offenders who are in maximum security or who are supervision risks are involved. The camps, reformatories, juvenile and correctional institution visits may be held beyond the security perimeter when the weather permits, but always under supervision of an officer. Penitentiaries may establish outdoor visiting when weather and facilities permit, but always inside the security perimeter. If space is available, a portion of the visiting room should be equipped and set up to provide a diversion for the children of visitors.

b. The Visiting Room Officer

Visits must be supervised to prevent the passage of contraband and to insure the security and welfare of the institution. Visits have an inevitable and extensive public relations aspect. The impressions gained by the visitor, whether he be a member of the offender's family or a government official, are of the utmost importance. For these reasons, selections for this correctional assignment should not be left to chance or shifted frequently. The officer's personal appearance, his manner of speech, his ability to be tactfully firm, his alertness, his grasp of regulations, and his judgement in sensing situations requiring referral to other institutional departments, will determine the effectiveness of the visit.

c. Visiting Times

Each institution will establish its own visiting schedules. Although visiting on Saturdays, Sundays, and holidays may be emphasized, the restriction of visiting to these days may be a hardship upon some families and arrangements for suitable hours should be made if at all possible. Evening visiting hours can and should be established where staff resources permit.

d. Frequency of Visits

Limitations on the length or frequency of visits should be imposed only to avoid chronic overcrowding. A reasonable number of visits or number of hours per month shall be established consistent with resources available. Exceptions should be made to any such rules where indicated by special circumstances, such as distance the visitor must travel, frequency of the inmate's visits, or health problems of the offender.

e. Regular Visitors

The casework staff will be responsible for compiling a regular visiting list for each offender and the following should be placed on the approved list after suitable investigation:

- (1) Members of the Immediate Family  
This includes mother, father, step-parents, foster parents, brothers and sisters, wife or husband and children. Under ordinary circumstances, there would be no question about placing such persons on the regular visiting list of the offender.
- (2) Other Relatives  
These include grandparents, aunts, uncles, in-laws, and cousins, who may be placed on the approved list if the inmate wishes to have such visits regularly.
- (3) Friends and Associates  
The visiting privilege may be extended to friends and other non-relatives if it can be ascertained that the association or friendship is a genuinely constructive one and that the offender would profit from such continued contact.
- (4) Persons with Criminal Records  
The existence of a criminal record of itself should not constitute a barrier to proposed visits. Consideration should be given to the nature and extent of the criminal record and history of recent criminal activity as weighed against the value of the relationship. Each such case, however, should have the specific approval of the Chief Executive Officer or his designated representative.
- (5) Children Under Sixteen  
It is not considered desirable that children under the age of 16 be permitted to visit unless accompanied by a responsible adult. Exceptions in unusual circumstances may be made by special approval of the Chief Executive Officer.
- (6) Number of Visitors  
Some limitations may be necessary where the inmate has a large number of regular, approved visitors living in the vicinity of the institution. Where facilities permit, family groups should be allowed to visit. The Chief Executive Officer may establish a regulation as to the maximum number of persons who may visit an inmate at one time, but these regulations should be interpreted flexibly, their purpose being simply to prevent overcrowding in the visiting room or unusual difficulty in supervising a visit.
- (7) Special Visits  
Special visits may be authorized by the Chief Executive Officer or his designated representative. These persons include clergymen, former or prospective employers, sponsors, and parole advisers. Visits in this category serve such purposes as assistance in release planning, counseling, and discussion of acute family problems.
- (8) Surrogate Visitation  
It is the policy of the Bureau of Prisons that no inmate shall be

permitted to engage actively in a business or profession while serving a sentence. An inmate who has engaged in a business or profession prior to commitment will be expected to delegate authority for the operation of such business or profession to a qualified person. This does not mean that the offender may not have a visit which may be necessary to protect his resources or financial interests. Even though the offender has turned over the operation of his business or profession to another person or persons, there may be an occasion where a decision must be made which will substantially affect the assets or prospects of the business. Insofar as possible, business matters which require the offender's attention should be resolved by special purpose correspondence.

Before visits of this kind are permitted, it should be ascertained that the business is of a legitimate nature. The time allowed for the visit shall be determined by the Chief Executive Officer or his authorized representative. Special arrangements may be necessary in the instances where those listed as special offenders are involved. In these instances, and when there are excessive requests for business visits, the matter should be brought to the attention of the Director, with a full statement of the details.

Whenever it has been determined that an offender is a citizen of a foreign country, the consular representative of that country shall be permitted to visit such offenders on matters of legitimate business. This privilege shall not be withheld even though the inmate may be undergoing punishment status.

(9) Attorney Visits (See F.S. 2001.23--Attorney Visits).

# 10. Visits to Offenders Not in Regular Population Status

## (1) Admission Status

Visits during the admission--orientation period may generally be limited to the immediate family. However, some flexibility and good judgment should be exercised in approving or disapproving visitors during this time period.

## (2) Hospital Patients

When visitors come to see an offender who is hospitalized, the Chief Medical Officer, in consultation with the Chief Correctional Supervisor will determine whether a visit should take place and if so whether it should be held in the hospital. Visits that are allowed to take place in the hospital will be supervised, and the Chief Correctional Supervisor will provide escort for the visitors. When the Chief Medical Officer recommends against the visit because the offender is suffering from an infectious disease, is in a psychotic or emotional episode which makes a visit inadvisable, or is otherwise not in a condition to see visitors, the situation

should be very carefully interpreted to the visitor by the Chief Executive Officer or his authorized representative.

(3) Disciplinary Status

Visiting privileges should not be taken away from an inmate because of violation of institution regulations, other than those specifically related or concerned with the visiting regulations. However, inmates in segregation or isolation may be denied a visit, if in the opinion of the Chief Executive Officer or his authorized representative, it would jeopardize the security of the institution.

M. Visits from Community Groups and Individuals

Offenders who have no friends or relatives who can visit them deserve special attention. Others who may particularly benefit are those offenders whose relatives or friends do not have a constructive influence on them and offenders who feel they are outsiders and have little prospect for satisfactory community adjustment. Still others are persons who present special problems such as intense feelings on social relationships. Visits from members of the community should assist the inmate in developing and maintaining a more normal social attitude and outlook. It should be viewed as an influence which can assist in breaking down the traditional isolation under which the offender lives.

Persons which should be drawn upon are civic and religious organizations and other persons whose interest and qualifications for this kind of service may be known to various staff members. Generally, visits for inmates already involved in community based programs will be held in the institutional visiting room. However, special visits in the community may be specifically approved, but only in accordance with the Policy Statement on Inmate Parole. (See P.S. 7300.18A)

N. Procedures

The Chief Executive Officer of the institution is responsible for the establishment and enforcement of visiting regulations and their adaptation to the institution in accordance with the policies issued by the Central Office. He can, at his discretion, delegate to the Chief Classification and Parole such authority as he deems advisable. The Chief Classification and Parole shall be responsible for furnishing the Chief Executive Officer and other staff current information concerning all visitors and shall assist the Chief Executive Officer in the general supervision of this phase of institutional administration; however, the Chief Correctional Supervisor is responsible for the operation of the visiting room and the selection and training of the Visiting Room Officers.

(1) Preparation of the List of Visitors

Each offender will submit to the Classification and Parole Office a list of persons with whom he wishes to visit. This action will normally occur during the Admission Orientation period. After appropriate investigation of the proposed list of visitors, the Parole Office will prepare in duplicate a list of all visitors approved for regular visiting. Distribution will be made to the inmate file, the individual inmate concerned, the Visiting Room Office, and other offices responsible for identification of persons as approved visitors. This will ordinarily be done within the first few days after the inmate's commitment, hopefully, within 48 hours.

Visitors should receive a continuous notification of their approval as visitors including a copy of the visiting regulations. These regulations should provide specific instructions for reaching the institution and should make reference to Section 1791, Title 18, U. S. Code, which provides a penalty of not more than ten years for any person who introduces or attempts to introduce into or upon the grounds of any Federal prison or correctional institution or takes or attempts to take or send therefrom anything whatsoever without the knowledge and consent of the Chief Executive Officer of the institution. Additions to or deletions from the list of visitors will be approved by the Classification and Parole Department and forwarded routinely.

(2) Identification of Visitors

The usual means of identification are automobile driver's license, Social Security card, membership cards of various kind bearing a signature of the visitor or other personal papers. These need not be the sole basis of identification. Tactful questioning on the basis of available information may help weed up doubtful cases. Inability to establish identity should be reported to the Chief Executive Officer or his authorized representative.

(3) Records of Visitors

The Visiting Room Office shall maintain a record of each visit, regular, special, approved or denied. Each visitor shall be required to sign the register on leaving the institution.

(4) Supervision of Visits

In the supervision of visiting, it is the responsibility of the Visiting Room Office to make certain that all visits are conducted in a quiet, orderly, and dignified manner.

The staff should be aware of any action passed between the offender and his visitor. If there is a substantial basis to conclude that material now being passed which constitutes contraband or any other violation of the law or regulations, the Visiting Room



Officer may examine the paper. The Chief, Classification and Parole or the duty officer should be consulted in questionable cases.

In no instance shall the Visiting Room Officer accept articles or gifts of any kind for an offender, except packages which have had prior approval by the Chief Executive Officer or his designated representative. Money may be left for deposit in the inmate's commissary account, and each institution shall devise its own method of handling money in compliance with the Commissary Manual.

Handshaking, embracing, and kissing by immediate members of the family may be permitted within the bounds of good taste at the beginning and end of the visit. The reason for limiting physical contact is to minimize the opportunity to introduce contraband into the institutions.

(9) Penalty for Circumventing Regulations

Any effort to circumvent or evade the visiting regulations established by any Bureau of Prisons facility will not only result in the denial of future visits, possibly over an extended period of time, but may require that other disciplinary action and possible court proceedings be initiated against the visitor.

*Norman A. Carlson*

NORMAN A. CARLSON  
Director, Bureau of Prisons  
Commissioner, Federal Prison Industries, Inc.

BUREAU OF PRISONS

WASHINGTON, D. C. 20037

# Policy Statement

9001,7A

**SUBJECT:** MINIMUM YET IDEAL, RESEARCH MATERIALS AND  
IDEAL, LIBRARY, AND PREPARATION OF LEGAL  
RESEARCH

9-8-71

1. **POLICY.** It is the intent of the Bureau of Prisons to afford inmates reasonable access to legal materials, legal counsel and a reasonable opportunity to prepare their legal documents. The inmate program will continue without undue disruption by legal activities except in those instances where inmates are confronted with imminent deadlines established by the court in which the inmate lawsuits are pending.

2. **PURPOSE.** The purpose of this Policy Statement is to set forth the policies to be applied throughout the system. In certain instances the Policy Statement is purposely general to enable individual institutions, within these guidelines, to promulgate local rules and regulations which are most appropriate to their needs.

All institutions are to submit copies of their local policy statements which implement this Policy Statement to the Office of General Counsel and Review within 60 days from this date.

3. **DIRECTIVE AFFECTED.** Policy Statement 9001,7A dated 8-29-71 is hereby rescinded. Form BY-A14-6 is discontinued.

4. **PROVISION FOR LEGAL RESEARCH MATERIALS.**

a. In the fall of 1971, the United States Supreme Court found the California Department of Corrections inmate library regulations, which were similar to the Bureau of Prisons, to be deficient in that they deprived the indigent inmate of an opportunity to consult basic legal reference in preparation of legal actions. Therefore, we are expanding the content of libraries, and revising the methods of acquisition of the legal materials as well as the receipt and handling of these materials within the institutions.

b. In order to provide uniformity and meaningful research materials consistent with the needs of each institution we will acquire the following for each institution:

1) United States Code Annotated

a. Title 18 - all volumes (Criminal Code and Criminal Procedure)

b. Title 28 - Sections 2251 to and (National Supreme and National to Vacate Sentences)

c. Title 28 - Volumes containing Supreme Court Rules, Federal Rules of Appellate Procedure, and U.S. Court of Appeals Rules

- d. Federal Rules of Civil Procedure (in pamphlet form)
  - e. Title 21 - (Food and Drug)
  - f. Title 26 - Sections 4001 to end (Narcotic Offenses)
  - g. Title 42 - Sections 1975 - 2010
  - h. U.S. Constitution, Amendment 1 to end
- 2) Black's Law Dictionary
  - 3) United States Law Week (Bureau of National Affairs)
  - 4) Criminal Law Reporter (Bureau of National Affairs)
  - 5) Hall and Kaminar, Modern Criminal Procedure
  - 6) Bureau of Prisons Policy Statements of interest to inmates to be maintained in notebook form.
- a. In each adult institution we intend to acquire in addition to the above the current issues of:
- 1) United States Supreme Court Reports
  - 2) Federal Reporter Second
  - 3) Federal Supplement
- d. The Central Office Librarian will acquire and distribute the basic law library materials to each institution. Previously acquired materials should be retained, and inmate-donated books and materials may be added to the collection. In case there is a question as to the acceptance of a particular volume, the Office of General Counsel should be consulted.
- e. Maintenance of the materials once received will be the responsibility of the institution. Each institution should appoint one person to be designated "law librarian." This person should, if at all possible, have some familiarity with library, business or clerical type work. Most materials once acquired will need little maintenance, however, the Criminal Law Reporter and the United States Law Week are financial publications with weekly supplements which must be correctly filed if these services are going to be of use as intended.

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JONI, TM  
b-h-52

1. It is preferable that each institution set aside a sufficiently large room where the books may be kept and where the inmates may work at tables without the need for moving the materials. In planning for the expanded law library, especially of the adult institutions, it must be kept in mind that as each reporter is obtained it becomes a permanent part of the collection. Therefore, in selecting the site for the law library, the expanding nature of the collection should be taken into consideration.
2. It is contemplated that in each adult institution, only one set of the case reporters will be obtained for the use of all inmates. With respect to the basic resources materials, however, additional sets will be furnished when it can be shown that inmate assignment prohibits frequent access to the main law library.
3. Incumbent on the purchase of these additional materials is that they be available for inmate use as needed. When possible, evening and weekend hours should be provided. Institution copying equipment may be made available to reproduce materials needed for research outside the library area. When this is done, procedures should be established for an inmate to request a reasonable amount of reproduced material. It is suggested that the request form contain a space for the inmate to indicate why material is needed outside the time made available in the library. By providing ample hours for library usage and by making the copying equipment available, when possible, mutilation and theft of legal materials can be minimized. Legal materials are expensive to maintain, so supervision of the library area should be provided as necessary to protect the materials. It will be the institution's responsibility to maintain the collection intact and notify the librarian in the Central Office of permanently missing or damaged volumes so that they can be replaced. All inmates using the library should be advised of the rules which govern its use, and of the injury to all which can result from misuse of the facility provided. Unauthorized materials from the library found in an inmate's possession should of course be considered as theft or destruction of government property.
4. Each institution should separately submit to the Office of General Counsel a copy of its plan to implement the Policy Statement within sixty (60) days from this date. This should describe the area set aside for the legal materials, the hours the materials will be available, the person designated to supervise the law library, and the copying arrangements if any to be provided. If, to make the materials freely accessible to all inmates, more than one set of basic reference materials is necessary, please indicate the number needed. When doing so, please explain where it is intended each set will be used.

5. PURCHASE AND DISPOSITION OF LAW BOOKS AND OTHER LEGAL MATERIALS BY JUDGES.

- a. If an inmate has the financial means to purchase law books, he shall be allowed to do so unless there is a compelling reason to the contrary. It is inappropriate for an administrator to make the determination that the specific material sought by an inmate is not relevant to his case. If there appears to be clear and compelling reasons to disallow a purchase, the Office of the General Counsel should be advised before a final determination of the matter is made.
- b. Law books and other materials are to be purchased only from the primary sources of supply, i.e., the publisher of law books; the clerk of court and/or a judge of the court in the case of court documents.
- c. Since the institutions will be maintaining the basic reference books there should be no need to accumulate all books purchased by inmates. An inmate may donate a particular book to the library when he is finished with it, if he wishes to do so and the institution agrees to accept the offer. The physical facilities of the institution and the nature of the book are appropriate factors to be considered, i.e., whether additional books can be readily accommodated and whether the book is broad in applicability. In the event a book is not to be acquired, it should be sent home or destroyed, whichever the inmate prefers.
- d. The present accumulation of obsolete and irrelevant materials may be disposed of but case reports (Federal Supplements; Federal Reporter; United States Reports) already in the library should be retained. Further accession of these reporters should be made only by mutual agreement as indicated above.

6. PREPARATION OF LEGAL MATERIALS BY INMATES.

- a. Inmates should be allowed to have a reasonable amount of time to prepare their documents. What is reasonable depends upon the individual circumstances. Inmates who are required to meet deadlines in connection with pending litigation in general should be given more latitude than those who are preparing to institute suit and are not required to file within a given period. Documents presented for submission to the courts should always be forwarded, if they are threatening or indignant, a special cover letter should accompany the document explaining Bureau policy and relevant background factors and data.

Page 3  
2001.25  
5-8-77

- b. In 1964, the United States Supreme Court held that, unless there was a reasonable alternative, one inmate could not be prohibited from assisting another in the preparation of his legal matters. Therefore, unless the institution has an active, on-going legal assistance program, one inmate should be allowed to assist another in the research for and the preparation of legal documents.
- c. Inmate in apprenticeship status should, as far as possible, be given the opportunity to work on their legal matters and have access to legal references, materials equal to those persons in general population.
- d. Preparation of legal documents in living quarters during "off duty" hours may be authorized. Factors which might preclude such arrangements could include the individuals involved or the peculiar housing accommodations.

#### 7. USE OF TYPEWRITERS:

- a. The advantage of submitting typewritten documents is well established. Thus unless it is demonstrated that the use of typewriters is not feasible in a particular institution, their use should be allowed either through inmate clerks to whom handwritten documents are submitted by the individual inmates or typed individually, or submitted in public stenographs, whichever procedure is in accordance with institution policy.
- b. If there is to be a delay in having documents typed, the inmates should be so advised, and he may transmit handwritten papers to the court.

#### 8. RETENTION OF ATTORNEYS:

- a. Inmates should be allowed to contact attorneys for the purpose of representing them.
- b. While it is permissible to advise an attorney of the funds which the inmate has available, and it is many times desirable to counsel with the inmate, if the inmate has attained his majority and is mentally competent to handle his own affairs, we are not to interfere with the financial arrangement between attorney and client. Neither are we to act as a guarantor or collector of the fees. The payment of retained attorney's fees is a matter between attorney and client. Administrative Form 6 is hereby discontinued.

9. ATTORNEY VISITS.

- a. Visits by retained and appointed attorneys and by attorneys requested by an inmate or his family in contemplation of prospective legal representation shall be permitted.
- b. Specific regulations pertaining to the frequency of visits shall not be established due to the fact that the number of visits necessary is dependent upon the nature and urgency of the legal problems involved.
- c. The attorney should normally make an appointment with the Chief Executive Officer or his authorized representative prior to each visit but every effort should be made to accommodate an attorney's visit where prior notification was not practicable.
- d. The attorney shall identify himself as the attorney for whom the visit has been approved by showing the letter from the inmate or his family requesting the visit or by showing such other information that would identify him as an attorney of the inmate he has requested to see.
- e. The Bureau of Prisons reserves the right to refuse admission to one of its facilities to those who fail to comply with regulations or who seek to exploit offenders. If there is any question about the identity of the attorney or his qualification as an attorney in good standing, the matter should be referred to the Office of General Counsel and Review.
- f. Visits between the attorney and his client shall not be subject to auditory supervision. Tape recordings may be used by the attorney during the course of his visit when he agrees in writing in advance of the interview that the only purpose of the recording is to facilitate the attorney-client relationship. Attachment A is a sample of a statement which might be used to assure compliance with this section.

10. CORRESPONDENCE BETWEEN ATTORNEY AND CLIENTS.

- a. Correspondence addressed to an attorney shall be mailed from the institution unopened and uninspected. A statement to the attorney, from the Chief Executive Officer, cautioning against use of this mail to transmit contraband or to forward any matter on to unauthorized correspondents, should be attached. Inmates should be



advised that at their option and with the concurrence of their attorney and that, if this election is made, it could cause some delay in the delivery of incoming correspondence. The attorney should also be advised that all addressed to the inmate will be opened and inspected in the presence of the inmate, if the attorney indicates on the incoming envelope that this is his preference. Attachment B is a sample of that statement:

- b. Correspondence addressed to an inmate by an attorney or law office may be opened, for the purposes of inspection for contraband.
- c. Incoming correspondence shall be stamped immediately on arrival, on the envelope and letter, to show time of receipt. All matters in this correspondence which relate to legal advice or concern pending or prospective litigation are to be kept in strict confidence by the inspecting official. Attorney-inmate mail shall not be copied by the institution. Rejected material shall be returned to the sender, with an indication of the reason for rejection. Material consisting of or proposing violation of the law need not be returned to the sender, but should be referred to the appropriate investigating agency.
- d. When, in emergency circumstances, a telephone call between the attorney and inmate is authorized, the institution staff shall assure that the person is an attorney, and shall then not monitor the conversation.

  
NORMAN A. CARLSON  
Director, Bureau of Prisons

Attachment CH-1  
1001.15  
8-19-73

ATTACHMENT A

I, \_\_\_\_\_, a licensed attorney in the State of \_\_\_\_\_, with offices at \_\_\_\_\_, \_\_\_\_\_, visiting \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_, agree that my visit with this inmate is for the purpose of facilitating the attorney-client relation and for no other purpose. I agree that any tape-recording or other recording made by me will be used only to facilitate this relationship.

ATTACHMENT B

This institution retains the right to open mail from attorneys to inspect for physical enclosures constituting contraband. This mail will not be read or copied, since it is assumed to be within the purview of the attorney-client relationship. It should not be used for other purposes. The use of this mail for other purposes may result in preclusion of the correspondent from the provisions of this policy statement. The inspection will be done in the presence of the inmate, if the attorney so indicates on the outside of the incoming envelope. This could be substantiated as follows: "This envelope should be opened only in the presence of the addressee."

MAILED

BUREAU OF PRISONS

WASHINGTON, D. C. 20537

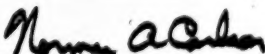
## Operations Memorandum

1001,9

SUBJECT: REVISED PAGES 6, 7, AND ATTACHMENT TO POLICY  
STATEMENT 1001,28, SUBJECT: ACCESS TO LEGAL  
REFERENCE MATERIALS AND LEGAL COUNSEL AND  
PREPARATION OF LEGAL DOCUMENTS

8-29-72

1. PURPOSE. To transmit revised pages to Policy Statement 1001,28 relative to legal reference materials.
2. ACTION. Replace pages indicated on the attached Page Control Chart.
3. THIS OPERATIONS MEMORANDUM IS DATED AND ARCHIVED 21, 1972.



HERMAN A. CARLSON  
Director, Bureau of Prisons

- \* b. In 1969, the United States Supreme Court held that unless there was a reasonable alternative, one inmate could not be prohibited from assisting another in the preparation of his legal matters. Therefore, unless the institution has an active, on-going legal assistance program, one inmate should be allowed to assist another in the research for and the preparation of legal documents.
- \* c. Inmates in segregation status should, as far as possible, be given the opportunity to work on their legal matters and have access to legal reference materials equal to those persons in general population.
- d. Preparation of legal documents in living quarters during "off duty" hours may be authorized. Factors which might preclude such arrangements could include the individuals involved or the peculiar housing accommodations.

#### USE OF TYPEWRITERS.

- a. The advantage of submitting typewritten documents is well established. Thus unless it is demonstrated that the use of typewriters is not feasible in a particular institution, their use should be allowed either through inmate clerks to whom handwritten documents are submitted by the individual inmates or typed individually, or submitted to public stenographers, whichever procedure is in accordance with institution policy.
- b. If there is to be a delay in having documents typed, the inmates should be so advised, and he may transmit handwritten papers to the court.

#### RETENTION OF ATTORNEYS.

- a. Inmates should be allowed to contact attorneys for the purpose of representing them.
- b. While it is permissible to advise an attorney of the funds which the inmate has available, and it is many times desirable to counsel with the inmate, if the inmate has attained his majority and is mentally competent to handle his own affairs, we are not to interfere with the financial arrangement between attorney and client. Neither are we to act as a guarantor or collector of the fees. The payment of retained attorney's fees is a matter between attorney and client. Administrative Form 6 is hereby discontinued.

9. ATTORNEY VISITS.

- a. Visits by retained and appointed attorneys and by attorneys requested by an inmate or his family in contemplation of prospective legal representation shall be permitted.
- b. Specific regulations pertaining to the frequency of visits shall not be established due to the fact that the number of visits necessary is dependent upon the nature and urgency of the legal problems involved.
- c. The attorney should normally make an appointment with the Chief Executive Officer or his authorized representative prior to each visit but every effort should be made to accommodate an attorney's visit where prior notification was not practicable.
- d. The attorney shall identify himself as the attorney for whom the visit has been approved by showing the letter from the inmate or his family requesting the visit or by showing such other information that would identify him as an attorney of the inmate he has requested to see.
- e. The Bureau of Prisons reserves the right to refuse admission to one of its facilities to those who fail to comply with regulations or who seek to exploit offenders. If there is any question about the identity of the attorney or his qualification as an attorney in good standing, the matter should be referred to the Office of General Counsel and Review.
- f. Visits between the attorney and his client shall not be subject to auditory supervision. Tape recordings may be used by the attorney during the course of his visit when he agrees in writing in advance of the interview that the only purpose of the recording is to facilitate the attorney-client relationship. Attachment A is a sample of a statement which might be used to secure compliance with this section.

10. CORRESPONDENCE BETWEEN ATTORNEY AND CLIENTS.

- a. Correspondence addressed to an attorney shall be mailed from the institution unopened and uninspected. A statement to the attorney, from the Chief Executive Officer, cautioning against 1) use of this mail for purposes other than those within the purview of the attorney client relationship, 2) transmission of contraband, or 3) forwarding

- c. If any matter on unauthorized correspondence, should be attached. The attorney should also be advised that mail addressed to the inmate will be opened and inspected in the presence of the inmate, if the attorney indicates on the incoming envelope that this is his presence. Attachment A is a sample of that statement. In addition, inmates should be advised that at their option and with the concurrence of their attorney, mail from the attorney will be opened in their presence but that if this election is made, it could cause some delay in the delivery of incoming correspondence.
- b. Correspondence addressed to an inmate by an attorney may be opened, solely for the purpose of inspection for physical enclosures constituting contraband. This mail is not to be read nor copied. Enclosures, however, may be examined to make certain that they are within the scope of the attorney-client relationship. The contraband need not be returned to the sender but may be referred to the appropriate investigating agency and the sender may thereafter be precluded from the provisions of this policy statement with the approval of the Office of General Counsel.
- a. Incoming correspondence shall be stamped immediately on arrival, on the envelope and letter, to show time of receipt. When the election is made under (a) above to have the mail opened in the inmate's presence, the contents shall be marked to show time of delivery upon opening the envelope.
- d. When, in emergency circumstances, a telephone call between the attorney and inmate is authorized, the institution staff shall assure that the person is an attorney, and shall then not monitor the conversation.

*Norman A. Carlson*

NORMAN A. CARLSON, Director  
Bureau of Prisons

Attachment  
1001, 18  
6-8-73ATTACHMENT A

"\_\_\_\_\_, a licensed attorney in the State of \_\_\_\_\_, with offices at \_\_\_\_\_, \_\_\_\_\_, visiting \_\_\_\_\_, \_\_\_\_\_, agree that my visit with this inmate is for the purpose of facilitating in the attorney-client relation and for no other purpose. I agree that any tape-recording or other recording made by me will be used only to facilitate this relationship.

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ATTACHMENT B

This institution retains the right to open mail from attorneys to inspect for contraband. This inspection will be done in the presence of the inmate. If the attorney so indicates on the outside of the incoming envelope. This could caused some delay in delivery. Language on the envelope could be substantially as follows: "This envelope should be opened only in the presence of the addressee."

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BUREAU OF PRISONS

WASHINGTON, D. C. 20537

# Policy Statement

SUBJECT: CORRESPONDENCE REGULATIONS

7900.1A

9-16-72

1. PURPOSE: To establish, encourage, and insure meaningful correspondence procedures for sentenced and unsentenced prisoners in federal institutions.
2. RELEVANT AUTHORITIES: Policy Statement 7900.1 (Manual Bulletin 96 (Rev.) dated 12-20-62 is hereby superseded).
3. DISCUSSION: Constructive, wholesome contact with the community is a valuable therapeutic tool in the overall correctional process. At the same time, basic controls need to be exercised in order to protect the security of the institution, individuals and/or the community-at-large.

The size and complexity of each institution, the degree of sophistication of inmates confined in each of the facilities, and other variables indicate the necessity for flexibility in correspondence regulations.

All institutions are authorized to establish upon correspondence regulations. If an institution can justify the need to retain limited or restricted correspondence, the request and justification will be submitted to the Assistant Director, Division of Institutional Services, for review and final determination.

The Institution Policy Statement concerning correspondence should be given the widest and most complete distribution possible to staff and inmates.

4. PREREQUISITES FOR OPEN CORRESPONDENCE: Open correspondence privileges may be awarded to inmates who demonstrate a willingness to accept this privilege in a responsible and mature manner. This responsibility implies that all correspondence will be directed toward socially useful and rehabilitative goals. Evidence that a particular inmate is violating the privilege of open correspondence by becoming involved in illegal activities, or whose correspondence is frequently rejected for reasons outlined in 4.a, may be placed on the restricted correspondence list for such time as the adjustment committee deems appropriate. Inmates who explicitly mail an obscene number of letters, or who explicitly attempt to correspond with persons and/or businesses unknown to them except through ads in a newspaper or magazine, may also be placed on the restricted list, as deemed appropriate by the adjustment committee.

Specific care should be given during the institution period and thereafter in helping inmates understand their responsibility for open correspondence. Attention should be given to conditions which cause unnecessary

with funds on staff or endorsement to the inmate, his family, or community members. Many problems can usually be eliminated by definitive guidelines concerning received correspondence with inmates in other institutions, family members of other inmates, and persons not known prior to commitment, and the utilization of enclosures, educational material, price lists, unauthorized newspapers, printed material, food samples, etc.

PROPOSED FOR RECEIVED CORRESPONDENCE. There may be occasions when an inmate will be required to submit a list of correspondents for approval. Initially, this determination will be made by the classification committee or treatment team at the time of classification. Inmates whose correspondence may be suspected include major security risks, major participants in organized criminal activities, and inmates or highly publicized offenders. When it is necessary to set up a restricted correspondence list, the following guidelines are applicable:

a. Members of the immediate family and close relatives. There should be no question about the propriety of correspondence with the inmate's father, mother, wife or husband, and children. Other relatives including brothers, sisters, aunts, grandparents, cousins, etc., may be placed on the approved list, if the inmate wishes to correspond with them, following such evaluation as is warranted and practical. This judgment can usually be made on the basis of the probation officer's presentence report, and interview of the inmate.

b. Non-relatives. Inmate correspondence with friends, former institution associates, and other persons outside the immediate family may be authorized whenever it appears that such correspondence will not adversely affect the inmate's chances of rehabilitation or that it will not be detrimental to the well-being of the inmate or his correspondent. Correspondence with former business associates, must be limited to social matters. As a general rule, social correspondence will be limited to those persons known by the inmate prior to his commitment, although unusual circumstances may occasionally warrant an exception to this general rule.

c. Correspondents with Criminal Records. The existence of a criminal record, in and of itself, should not constitute a barrier to proposed correspondence. Consideration should be given to the nature and extent of the criminal record weighed against the aims to be achieved in permitting such correspondence. This principle is particularly applicable to relatives who may have a record of arrests and convictions. The guiding consideration as criteria for all correspondence should be: (1) is the correspondent genuinely interested in the inmate or just a chance acquaintance; or (2) does the correspondent seek to continue a previous friendship or is the correspondence likely to result in some future relationship detrimental to the inmate or to the correspondent?

d. Verification Procedure. Each year it becomes increasingly difficult to obtain information from law enforcement agencies on proposed correspondents. For this reason, an attempt should be made to secure necessary information from other sources, including the inmate, the proposed correspondent, and occasionally the probation officer or other community resources. Each institution will need to plan its own verification procedure, depending upon the sophistication of the inmates with whom they are concerned and knowledge of resources for verification.

a. Number of Authorized Correspondents. The number of names which may be on the approved list of correspondents is to be limited to a reasonable number, but generally a minimum of 12 outgoing letters a week will be authorized.

b. GENERAL PROVISIONS FOR ALL CORRESPONDENCE.

a. Number of Letters Allowed. We recognize the importance of maintaining family and community contacts and for this reason the government will pay postage on a "reasonable" number of letters. Use of certified or registered mail will be permitted providing the inmate has funds available to pay for the use of these services.

Chief Executive Officers are authorized to set the number of letters per week in overseas correspondents (including Alaska and Hawaii) for which the institution will pay air postage.

Ordinarily, no maximum number shall be set for the number of incoming letters any one inmate shall receive during a week.

An arbitrary limitation need not be placed on the number of pages in either outgoing or incoming letters, but inmates shall be advised to keep their outgoing correspondence to a "reasonable" length.

b. Inspection of Mail. All incoming mail shall be inspected for money, enclosures, contraband, and for content which would incite conduct which is illegal.

Each institution shall establish procedures for monitoring all outgoing and incoming mail. In the juvenile and youth institutions, the camps, and in the adult correctional institutions and reformatories, "spot-checking" of most incoming mail should provide sufficient control. "Spot-checking" is defined as a procedure for reviewing or scanning a limited number of all letters received for mailing or for distribution to the inmate body. For example, spot-checking might involve scanning one of every ten or fifteen letters being mailed from or received at the institution. It does not imply that every letter should be scanned. It should be done frequently enough to maintain security, learn about a particular problem confronting the inmate or alert the staff to any matter that may help in evaluating the inmate's progress. For the adult penitentiaries and the Medical Center some careful scrutiny may be desirable. All institutions will adopt a procedure whereby both the incoming and outgoing mail of a particular inmate may be subjected to close scrutiny.

The number of inmates whose mail is being given such attention should be kept to a minimum, commensurate with the mission of the institution. The adult penitentiaries particularly, but other institutions as well, will wish to give close scrutiny to the outgoing and incoming mail of notorious racketeers, subversives, inmates who present difficult adjustment problems, serious escape risks, the mentally ill and perhaps others. Responsibility for maintenance of such a listing shall rest with the Associate Warden or Associate Warden and the Chief Classification and Parole. Reading, scanning or spot-checking either incoming or outgoing mail must not interfere with prompt handling of the mail.

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7300,1A  
3-16-77

c. Rejection of letters. During the Admission-Orientation period, and regularly thereafter, all inmates should be advised of the reasons for which incoming and outgoing mail will be rejected. Pursuant to these revised regulations all inmates must now assume personal responsibility for the contents of their correspondence. In general, inmates should be cautioned against including any of the following kinds of material in their letters:

- (1) Any material which might violate prison regulations, i.e., threats, blackmail, contraband or which indicate plots of escape.
- (2) Discussions of criminal activities.
- (3) No inmate may be permitted to direct his business while he is in confinement. This does not go to the point of prohibiting correspondence necessary to enable the inmate to protect the property and funds that were legitimately his at the time he was committed to the institution. Thus, an inmate could correspond about refinancing a mortgage on his home or sign insurance papers, but he could not operate a mortgage or insurance business while in the institution.
- (4) Letters containing orders or other obvious attempts to circumvent these regulations will be subject to rejection.
- (5) Insofar as possible, all letters should be written in English, but every effort should be made to accommodate those inmates who are unable to write in English or whose correspondents would be unable to understand a letter written in English. The criminal's employment of the inmate, the relationship of the inmate and the correspondent are factors to be considered in deciding whether correspondence in a foreign language should be permitted.

Any outgoing letter scheduled for rejection because of an obvious violation of regulations should be returned to the inmate, along with a brief note as to the reason for rejection, as promptly as circumstances permit. Questionable outgoing letters should be referred immediately to the appropriate supervisor for review.

If an incoming letter is to be rejected and returned to the sender, it should be accompanied by a brief but courteous letter of explanation. Questionable incoming letters should be referred to the appropriate supervisory personnel. Further reference to the Associate Warden and/or the Warden may be made when questions of policy, public relations, etc., are involved.

JAMES, SA  
9-16-72d. Prosecution for Violations of Postal Regulations.

All inmates should be cautioned during the Admission-Orientation period and regularly thereafter that all letters placed in the U. S. Mail are placed there upon the request of the inmate, who must assume personal responsibility for the contents of each letter he or she deposits. Threats, extortion, etc., may result in prosecution for violation of the U. S. Postal regulations. The institution cannot assume responsibility for any such material being included in either incoming or outgoing letters but whenever such material is discovered in the incoming mail, the material may be returned to the sender, or turned over to the appropriate law enforcement agency for possible prosecution.

e. Attorneys. Inmates shall be permitted to correspond with

attorneys in conformity with Bureau of Prisons Policy Statement, 2001.7A dated June 29, 1971.

f. Handling of Incoming and Outgoing Mail. Some institutions

may wish to establish a procedure for keeping a record of the mail of certain selected inmates, when this is necessary and desirable.

g. Correspondence While in Admission Orientation, Holdover Status, and of Unsettled Prisoners. It is of course

desirable that inmates in Admission-Orientation and "holdover" status be permitted to receive and send letters particularly to members of their immediate family during these particularly difficult periods. Until the inmate's status is determined, such inmates may be permitted to write to at least one and possibly two close relatives immediately, on the basis of an evaluation of whatever information is available. It is particularly important that inmates in "holdover" status, as a result of bus or other forms of transportation, be permitted correspondence privileges as similar to those of all regularly confined inmates as circumstances will permit.

There will be no limitation or restriction on correspondence for sentenced prisoners. Mailed letters may be mailed to attorneys of record, judges, the prosecutors in the district where committed or where charges are pending. Other letters will be inspected for contraband only and every attempt will be made to allow unrestricted mail privileges as long as sound custodial practices are followed.

h. Correspondence for inmates in Segregation and Administrative

Segregation. Inmates in segregation shall be allowed full correspondence privileges, unless his misconduct involves a serious violation of correspondence regulations.

A person who seriously violates institution mail regulations should not suffer indefinitely the loss of his basic correspondence privileges. It is obvious, however, that such violations should result in close scrutiny of the offender's mail until such time as it seems evident that further violations will not occur. Loss of other institution privileges, i.e., movies, participation in arts and crafts, etc., may be used by the Adjustment Committee for violation of correspondence privileges.

7. SPECIAL PURPOSE LETTERS. For inmates on the restricted correspondence list, the warden may authorize special purpose letters in addition to or apart from the regular allowance of outgoing correspondence to persons on the approved mailing list. Authorization of Special Purpose Letters shall be the responsibility of the Classification and Parole Officer or such other member of the staff as may be designated by the warden to supervise inmate correspondence. Special Purpose Letters may be approved for mailing when, in the discretion of the C&P Officer or other designated officer, they are legitimate, necessary, related to matters which cannot conveniently be handled by regular correspondence, or it may be a single letter to a person not included among the correspondence initially approved.

8. Petitions to courts, writs of habeas corpus, motions, appeals, and other legal papers shall be forwarded promptly to the appropriate court as a Special Purpose Letter payable by the government. If an inmate desires the institution to certify the mailing of particular correspondence, for documentation purposes, i.e., legal, detainees, business or personal purposes, a procedure should be set up for maintaining this information in the control file.

9. There should be no need for Special Purpose Letters for those inmates who have open correspondence privileges.

10. PRISONERS' MAIL BOX (PMB). See Bureau of Prisons Policy Statement 7300.2A dated December 28, 1967.

11. INMATE CORRESPONDENCE WITH REPRESENTATIVES OF THE PRESS AND NEWS MEDIA. See Bureau of Prisons Policy Statement 1230.1A, dated February 11, 1972.

12. REFERRAL TO BUREAU. Whenever the Chief Executive Officer is doubtful about the propriety of any incoming or outgoing letter, or has any question concerning an interpretation of the regulations, he should refer the problem to the Bureau, Division of Institutional Services.

13. INSTITUTION POLICY STATEMENT ON CORRESPONDENCE. Upon receipt of this Policy Statement, each institution will review and update their local policy issuance on this subject. The copies of the local policy statement shall be directed to the office of the Assistant Director, Division of Institutional Services, upon completion.

*Norman A. Carlson*

NORMAN A. CARLSON  
Director, Bureau of Prisons  
Commissioner, Federal Prison Industries, Inc.

## SUPREME COURT OF THE UNITED STATES

No. 78-1265

WILLIAM B. SAXBE, Attorney General of  
the United States, et al., PETITIONERS,

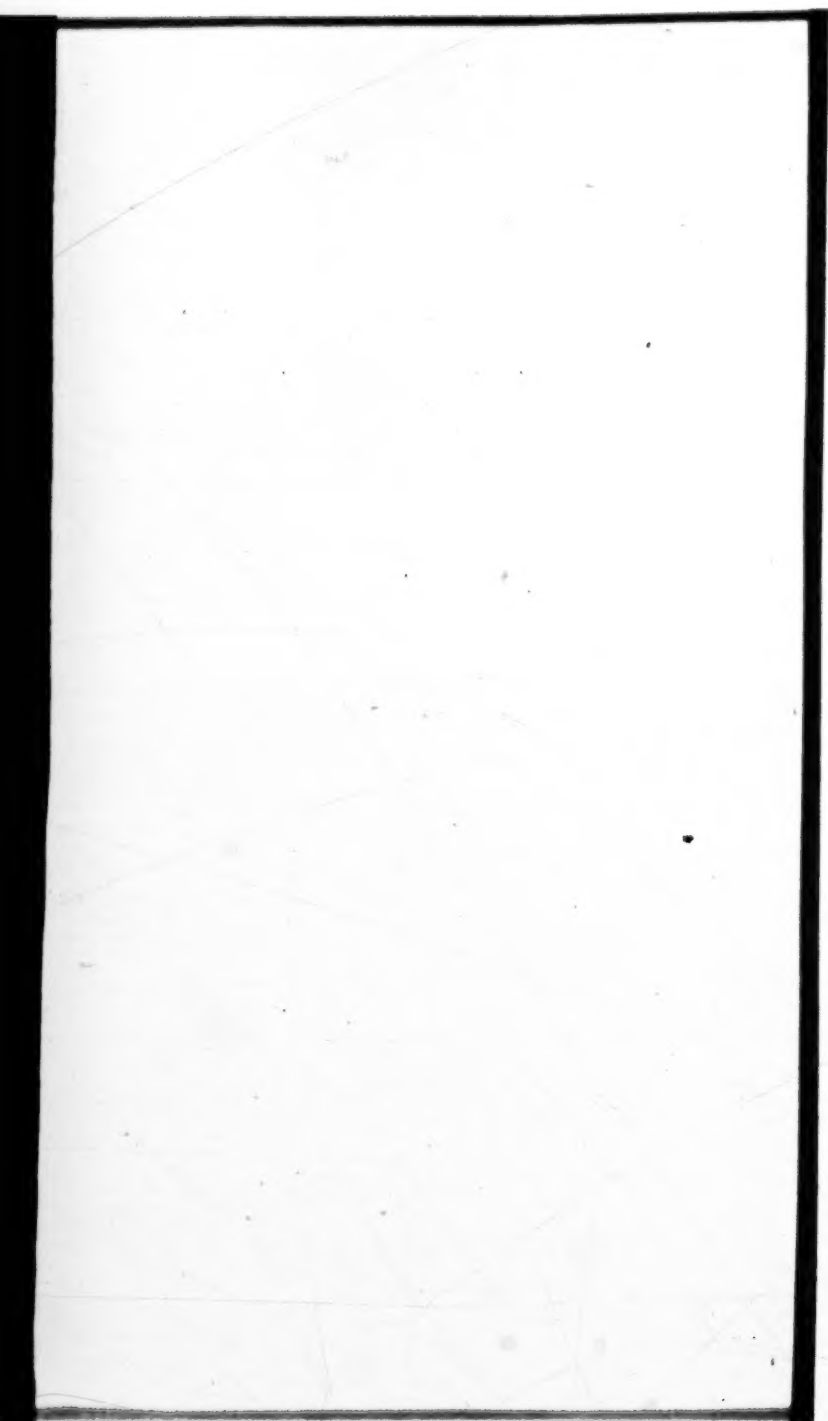
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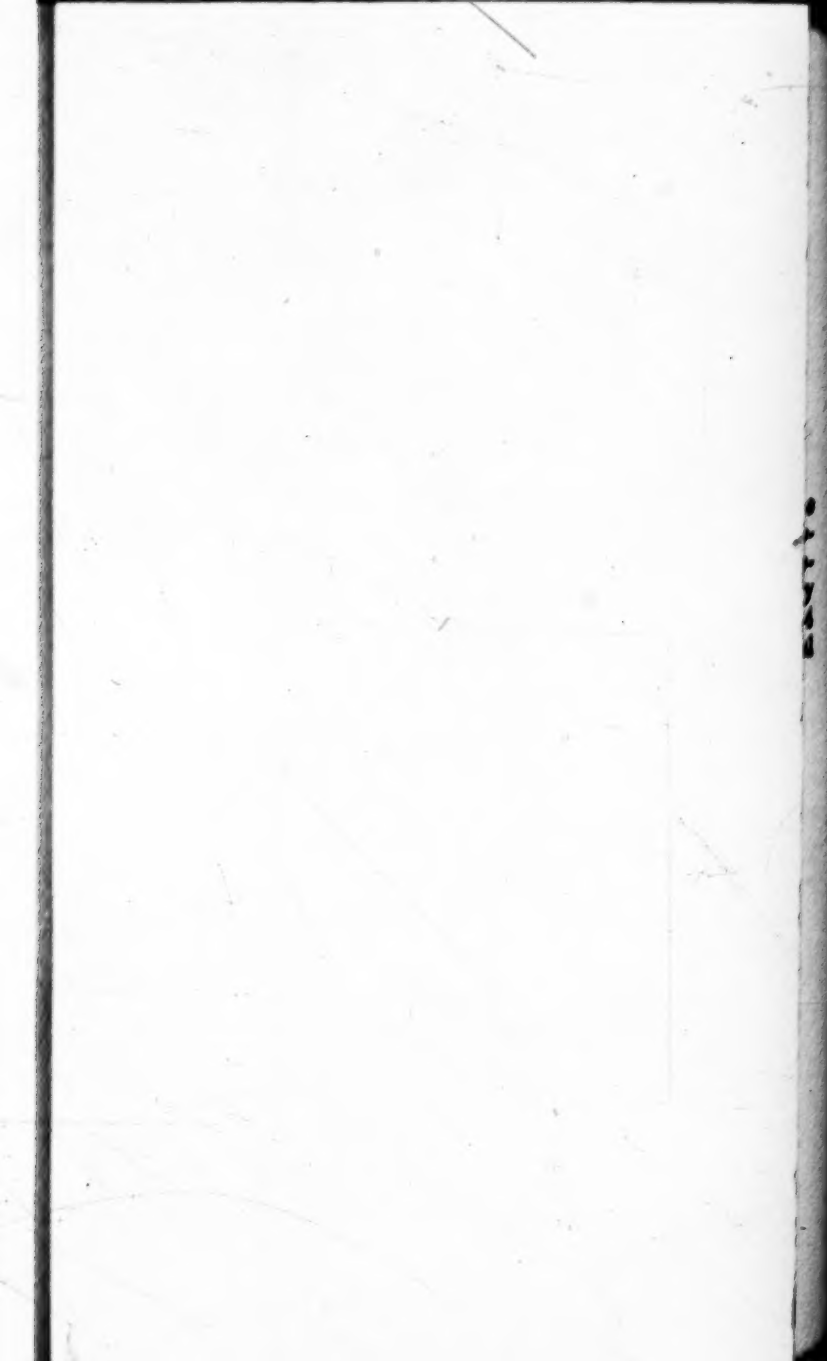
THE WASHINGTON POST, et al.

ORDER ALLOWING CERTIORARI. Filed March 4, 1974.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The time for filing the appendix and briefs is accelerated so that this case may be argued in tandem with consolidated cases Nos. 78-764 and 78-918. A total of two hours is allotted for oral argument for all three cases.







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# **In the Supreme Court of the United States**

**OCTOBER TERM, 1973**

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**No.**

**WILLIAM B. MAXBE, ATTORNEY GENERAL OF THE UNITED STATES, and NORMAN A. CARLSON, DIRECTOR, UNITED STATES BUREAU OF PRISONS, PETITIONERS**

**v.**

**THE WASHINGTON POST CO. and BEN H. BAHDIKIAN**

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**PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT**

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The Solicitor General, on behalf of the Attorney General of the United States and the Director of the United States Bureau of Prisons, petitions for a writ of certiorari before final judgment to the United States Court of Appeals for the District of Columbia Circuit.

**OPINIONS BELOW**

The district court's opinions of April 5, 1972 (App. A, *infra*, pp. 13-28) and December 19, 1972 (App. B, *infra*, pp. 29-30) are reported at 357 F. Supp. 770 and

779. The court appeals' order of September 6, 1972 (App. C, *infra*, pp. 37-39) is reported at 477 F.2d 1108.

#### **JURISDICTION**

The jurisdiction of this Court to review the instant case, which is pending in the United States Court of Appeals for the District of Columbia Circuit, is invoked under 28 U.S.C. 2101(e).

#### **QUESTION PRESENTED**

Whether the practice of the United States Bureau of Prisons of banning press representatives from conducting individual face-to-face interviews with particular federal inmates violates the First Amendment.

#### **REGULATION INVOLVED**

United States Bureau of Prisons Policy Statement No. 1220.1A (February 11, 1972) provides that:

- (6) Press representatives will not be permitted to interview individual inmates. This rule shall **apply even where the inmate requests or seeks an interview.** However, conversation may be permitted with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities.<sup>1</sup>

#### **STATEMENT**

This is a suit brought by a newspaper and one of its reporters to compel petitioners to permit respondents to conduct individual face-to-face interviews with particular inmates of federal prisons at Lewisburg, Penn-

<sup>1</sup> Policy Statement No. 1220.1A is reprinted in its entirety, App. D, *infra*, pp. 40-45.

sylvania, and Danbury, Connecticut," and to require petitioners to issue regulations permitting inmates to grant such interviews to press representatives. Following a hearing, the district court invalidated, as violating the First Amendment, Bureau of Prisons Policy Statement No. 1220.1A (App. D, *infra*, pp. 40-45), which prohibits inmates from granting such interviews to press representatives. The court's order of April 5, 1972, directed the petitioners to issue, within 30 days, rules which "establish a general policy of the Federal Bureau of Prisons to permit, subject to reasonable restrictions as to time and place, confidential, uncensored press interviews with any inmates willing to be interviewed" (App. A, *infra*, pp. 27-28). Pending the issuance of such rules, the court ordered petitioners to consider, on an individual basis, requests by the press to interview inmates, and to grant such interviews "except where it can be established that serious administrative or disciplinary problems would be created by the interview sought" (App. A, *infra*, p. 28).

The district court and the court of appeals refused a stay pending appeal. On May 12, 1972, this Court granted a stay pending appeal (406 U.S. 912).<sup>\*</sup>

<sup>\*</sup>The work stoppages at Lewisburg and Danbury in February 1972 which led to respondents' request for interviews with inmates at those institutions were the subject of full hearings conducted in March and May 1972 in litigation commenced by inmates of those institutions against federal officials. The decisions dismissing those actions are reported in *Meyers v. Alldredge*, 348 F. Supp. 807 (M.D. Pa.), and *Banks v. Norton*, 346 F. Supp. 917 (D. Conn.).

<sup>\*</sup>In accordance with the provision of the district court's order requiring petitioners to consider requests for individual interviews while it is promulgating the new regulation, the Bureau of Prisons on May 8, 1972 authorized respondents to interview seven inmates at Lewisburg.



Pursuant to an expedited briefing schedule, the case was briefed, argued and submitted to the court of appeals on June 30, 1972. On September 6, 1972, the court of appeals issued an order remanding the case to the district court for reconsideration in light of *Bransburg v. Hayes*, 408 U.S. 665 (decided June 29, 1972), and to make specific findings on a number of issues, including the necessity of personal interviews and the legitimacy of the Bureau's "big wheel" policy rationale for the non-interview rule (App. C, *infra*, pp. 37-39).<sup>1</sup> After conducting an evidentiary hearing on November 21-22, 1972, the district court entered another decision adverse to petitioners on December 19, 1972 (App. B, *infra*, pp. 29-36).

<sup>1</sup> The court of appeals directed that specific findings be made with respect to (App. C, *infra*, pp. 38-39):

1. The extent to which the accurate and effective reporting of news has a critical dependence upon the opportunity for private personal interviews.
2. The extent to which the so-called "big wheel" justification has any tangible footing in a significantly wide spectrum of experience in prison administration.
3. The factual foundations for any other asserted justifications for blanket prohibition of private personal interviews.
4. Whether there may be a valid basis for a ban, in the interest of avoiding impairment of good order, as to a particular prisoner or prisoners, even in the absence of a prior history of unruliness or disruptiveness.
5. Whether it is unfeasible to pursue a flexible approach to the allowance of private personal interviews, with appropriate scope for the judgment of the responsible prison officials and their consideration of administrative convenience or necessity.
6. Any other matters which, in the view of the District Court, by reference to *Bransburg* or otherwise, would further refine and illuminate the competing claims and assertions made by the parties so that ultimate resolution of the news access right under the First Amendment claimed in this instance may be as informed as possible.

In its supplemental decision, the district court re-affirmed the findings and conclusions in its first opinion,<sup>2</sup> made additional findings,<sup>3</sup> concluded that *Branz-*

<sup>2</sup> In that opinion, the court had stated (App. A, *infra*, pp. 18-19):

Several considerations have prompted the Bureau's decision which was reached only after serious deliberation and study:

(1) Excessive press attention to a relatively few notorious prisoners has detracted measurably from their rehabilitative treatment and imposed administrative difficulties.

(2) When press interviews are held they receive immediate wide attention throughout the prisons and the importance of the prisoner interviewed is exaggerated among other inmates. Thus prisoners receiving wide press attention may become "big wheels" and have their status within the prison community enhanced to a point that seriously interferes with effective discipline. *Neale v. Manson*, 326 F. Supp. 1375 (D. Conn. 1971).

(3) A few prisoners may use the medium of the press to foster revolt within the walls. All news that goes out comes back in by newspaper, television and radio. Angry words, false accusations and protest geared to violence can light a fuse that erupts the pent-up emotions of inmates who may feel neglected and abused.

These are all real considerations and while somewhat impressionistic, they are supported by experience and advanced in good faith.

<sup>3</sup> The district court found that the Bureau's "big wheel" policy justification for its interview ban does not "withstand analysis" because the term "big wheel" has no "precise meaning" and "[n]ot all prominent offenders or prison leaders fall in this category" (App. B, *infra*, p. 30). It also concluded that "accurate and effective reporting of news about prison conditions and events and prisoner grievances has a critical dependence upon the opportunity for face-to-face interviews with inmates" (App. E, *infra*, p. 57). The court also found that "the defendants have not imposed a news blackout on events and conditions at federal prisons, as the plaintiffs have alleged in their papers," and that "[t]he sources of information about federal prisons . . . which are available to the news media under Policy Statement 1220.1A enable newsmen to obtain some information about events and conditions at federal prisons" (App. E, *infra*, p. 51). The court adopted in its opinion, some of plaintiffs' proposed findings of fact and all of plaintiffs' proposed conclusions of law (App. B, *infra*, p. 30; App. E, *infra*, pp. 46-72).

burg was inapplicable, and again held that the Bureau's Policy Statement banning individual interviews violates the First Amendment.<sup>7</sup> While primarily resting its decision upon a putative First Amendment right of journalists to gather news, the court apparently refused to "differentiate between the rights of the press and the rights of prisoners committed to the custody of the Bureau" (App. A, *infra*, p. 18; App. B, *infra*, pp. 29, 35).<sup>8</sup> The district court directed that every request by a news representative for an individual interview with a federal inmate must be granted except "where it can be established as a matter of probability on the basis of actual experience that serious administrative or disciplinary problems are, in the judgment of the prison administrators directly concerned, likely to be directly and immediately caused by the interview because of either the demonstrated behavior of the inmate concerned or special conditions existing at the inmate's institution at the particular time the interview is requested" (App. B, *infra*, p. 35).

The parties thereafter filed supplemental briefs with the court of appeals,<sup>9</sup> which heard oral argument and took the case under submission on July 24, 1973. The case is still pending before that court.

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<sup>7</sup> The district court also stated (App. B, *infra*, pp. 34-35):

The stay entered by the Supreme Court of the United States, 406 U.S. 912 (1972), has resulted in a continuing serious suppression of paramount constitutional rights which requires immediate attention.

<sup>8</sup> The quoted language appears in the court's first opinion, which the supplemental decision reaffirmed.

<sup>9</sup> The briefs were filed in February, March and April 1973.

**REASONS FOR GRANTING THE WRIT**

This case presents closely related issues to those involved in *Procunier v. Hillery*, No. 73-754, probable jurisdiction noted, January 7, 1974, and *Pell v. Procunier*, No. 73-918, probable jurisdiction noted, January 21, 1974. These cases all present the question whether the First Amendment gives the press the right to interview inmates in prisons and, if so, what restrictions the prison authorities may impose upon such interviews in order to preserve and maintain prison discipline and proper prison administration. Although the *Procunier* cases involve a state prohibition upon press interviews with prison inmates and the present case involves a similar federal restriction, the underlying First Amendment issues involved are essentially the same, and the decision in the *Procunier* cases could also well determine the validity of the federal prohibition involved in the present case.

As explained below, the record in the present case contains a detailed exposition of the reasons that have led federal officials to prohibit press interviews with prisoners as well as extensive testimony indicating the reasons why journalists consider it important to be able to conduct such interviews. We believe that it would greatly aid the Court in deciding the important issues which it has undertaken to review in *Procunier* if it also had before it at the same time the full record in the present case. Moreover, because of the close interrelationship between the two cases, we suggest that the Court should not decide the state cases without also having this important federal case before it.

For these reasons, we think it would be appropriate

in this case for the Court to grant certiorari before judgment in the court of appeals under this Court's Rule 20 and to decide at the same time the authority of both state and federal prison officials to prohibit journalists from interviewing prisoners. See *United States v. Thomas*, 361 U.S. 950; *Taylor v. McElroy*, 360 U.S. 709, 710; *Kinsella v. Krueger*, 350 U.S. 986, 351 U.S. 470, 473; *Hollings v. Sharpe*, 344 U.S. 873 (see discussion in *Brown v. Board of Education*, 344 U.S. 1, 3); *Porter v. Dicken*, 328 U.S. 252.

The *Procunier* cases presumably will be argued at this Term of Court. In order to avoid their being delayed until next Term, if the Court grants the present petition prior to the argument in those cases, the government will undertake to file its brief in sufficient time so that this case may be argued this Term together with *Procunier*.

1. In *Hillery v. Procunier*, 364 F. Supp. 196 (N.D. Calif.), a three-judge district court rejected the contention that journalists have a right under the First Amendment to interview state prisoners, except where a compelling state interest justifies curtailment of such right in individual situations. The court, however, invalidated the California Department of Corrections rule that "Press and other media interviews with specific individual inmates will not be permitted," on the ground that the First Amendment entitles inmates to conduct face-to-face interviews with the press and other media in the absence of proof that any particular interview would present a "clear and present danger" to prison security. Both the California Department of Corrections and the press representatives appealed

that decision, and as noted, this Court has noted probable jurisdiction of those appeals.

In this case, the district court held that press representatives have a First Amendment right to conduct individual face-to-face interviews with particular federal inmates, and that all such interviews must be permitted unless the Bureau of Prisons proves, in advance, by objective evidence, that serious harm will "directly and immediately" result from any particular interview (App. B, *infra*, p. 35). The district court also stated that it could not "differentiate between the rights of the press and the rights of prisoners committed to the custody of the Bureau" (App. A, *infra*, p. 18). While there may be significant distinctions between the federal correctional system and state correctional systems, this Court's decision in *Procunier* will undoubtedly have a substantial impact upon, and probably control, the result in this case.

2. Consideration of the present case together with *Procunier* will illuminate the issues there. The district court in that case recognized that officials of the United States Bureau of Prisons had made a "considerable study" of interview practices and had concluded that "the ban on interviews is necessary to maintain the discipline, custody and control of the prison[s]" (364 F. Supp. at 204).<sup>10</sup> The record in the present case is complete and includes extensive testimony explaining

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<sup>10</sup> While the court referred to the record in *Seattle-Tacoma Newspaper Guild, Local #83 v. Parker*, 480 F.2d 1062 (C.A. 9), which sustained the Bureau's no-interview rule, at least as applied to maximum security facilities, the record in this case even more fully explains the basis of the Bureau's policy.



the reasons for the policy adopted by the Bureau, including its reliance upon the California Department of Corrections experience. The record in the present case also includes extensive testimony by journalists and others seeking to justify personal interviews, contains a survey of interview practices in a number of states and other countries, and contains evidence dealing with the distinctions between the state correctional systems and the federal correctional system."

The present case would thus provide the Court with a comprehensive view of, and a significant federal perspective on, the problems of prison administration and inmate and press needs which we believe would aid the Court in deciding the important First Amendment issues presented in *Procunier*.

3. The question whether journalists have a First Amendment right to interview prisoners in federal penal institutions is an important one which is currently the subject of substantial litigation, and which warrants review by this Court. In addition to the present case, the issue is pending before the Seventh Circuit in *Mitford v. Pickett*, No. 73-1958 (district court sustained the rule as applied to Marion Penitentiary, another maximum security institution, 363 F. Supp. 975); a federal district court in *Wicker v. Sazbe*, Civ. No. 112-72 (D.D.C.) (class action by journalists and federal inmates stayed pending outcome of *Washington Post*); the First Circuit in *McMillan v. Carlson*,

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" Copies of the court of appeals appendix and supplemental appendix in the present case are being lodged with the Clerk of this Court.



No. 74-1024 (district court decision of December 31, 1973, held that author has First Amendment right to interview John Larry Ray, inmate at Marion Penitentiary); and a federal district court in *Globe Newspaper Co. v. Sarbe*, Civ. No. 73-37480 (D. Mass.) (suit by ~~author~~ <sup>press</sup> to interview inmate Clifford Irving at a federal prison). (*Prelim. Inq. granted Feb. 12, 1974*)

In litigation which has been concluded, the Bureau's no-interview rule was sustained by the Ninth Circuit, at least as applied to McNeil Island Penitentiary, a maximum security institution, in *Seattle-Tacoma Newspaper Guild, Local #82 v. Parker*, 480 F.2d 1062. In *Houston Chronicle Pub. Co. v. Kleindienst*, 364 F. Supp. 719 (S. D. Tex.), the district court held that the press has a First Amendment right to interview federal inmates at a County jail. See also *Smith v. Bounds*, Civil No. 2914, decided March 14, 1972 (E.D. N.C.), affirmed, C.A. 4, No. 73-1658, June 8, 1973 (sustaining State rule in inmate suit); *Seale v. Manson*, 326 F. Supp. 1375 (D. Conn.) (sustaining State rule on individual basis in inmate suit); and *Burnham v. Oswald*, 342 F. Supp. 880 (W.D. N.Y.) (invalidating State rule).

**CONCLUSION**

For the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be granted.

**ROBERT H. BORK,**  
*Solicitor General,*

**IRVING JAFFE,**  
*Acting Assistant Attorney General,*

**LEONARD SCHAFERMAN,**

**ARTHUR H. KOMAROW,**

*Attorneys.*

**FEBRUARY 1974.**

## **APPENDIX A**

**The WASHINGTON POST CO. and Ben H. Bagdikian,  
Plaintiffs,**

**v.**

**Richard G. KLEINDIENST, Acting Attorney General of the  
United States and Norman A. Carlson, Director, United  
States Bureau of Prisons, Defendants.**

**Civ. A. No. 457-72.**

**United States District Court,  
District of Columbia,  
April 5, 1972.**

**Declaration and Order May 12, 1972.**

### **MEMORANDUM OPINION**

**GENELA, District Judge.**

This complaint seeks injunctive and declaratory relief. Plaintiffs, a newspaper and one of its experienced reporters, sought permission to interview certain prisoners at two federal penitentiaries; Lewisburg and Danbury. Defendant Carlson denied this request, relying on the Bureau of Prisons' Policy Statement of February 11, 1972, which flatly prohibits any interviews of prisoners subject to control of the Bureau, regardless of the reason for the request or the prisoner's status or offense.<sup>1</sup> Plaintiffs claim that this flat prohibition of the policy contravenes the First Amendment. They emphasize their desire to interview only prisoners willing to be interviewed and they recognize reasonable constraints as to time and place may be imposed so long as such interviews are not censored or overheard by prison

<sup>1</sup> Policy Statement No. 1220.1A is appended. Paragraph 4.b.(8) states in part: "Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. . . ."

officials. Restrictions upon interviews during periods of prison emergency are not questioned in this litigation.

Plaintiffs have a legitimate news interest. The Washington Post has run a comprehensive series on prison conditions, illustrated by articles attached to the complaint. The unsuccessful effort to interview which led to this litigation related to matter of obvious public interest. Recent work stoppages at Lewisburg and Danbury had apparently been satisfactorily resolved without bloodshed through negotiations between the Wardens and inmate representatives. Information subsequently came to the Washington Post that inmate ringleaders had been punished and that this was contrary to assurances given by prison authorities. The newspaper had reason to believe that some members of the inmate negotiating committees may have been placed in solitary, maced, deprived of necessary medical care and otherwise harshly treated. This information came from lawyers for inmates and their relatives, from prisoner letters and also from scattered congressional sources. The newspaper was interested not only in publicizing these apparently peaceful settlements which contrasted with several recent violent prison outbreaks but was prepared to expose any brutality or unwarranted retaliatory discipline if intimations received proved well founded.

Defendants contend that the press has no constitutional right of access to inmates for confidential interviews and urge that the same Bureau policy which permits contact between prisoners and the media both through uncensored mail and by casual conversations held in the course of prison tours<sup>\*</sup> provides sufficient access and is not arbitrary.

The Court denied a temporary restraining order immediately after the complaint was filed. Thereafter a hearing was promptly held on the prayer for preliminary injunction. Testimony was taken from several penal experts<sup>\*</sup> and the

<sup>\*</sup> This is the meaning and effect of the second half of paragraph 4.b.(6) of the Policy Statement.

<sup>\*</sup> The following witnesses testified at the hearing: plaintiff Hagathian; Benjamin Malcolm, Commissioner, New York City Department of Corrections; Leroy Anderson, Executive Assistant to the Director, District of Columbia

parties have filed detailed briefs. With consent of the parties the matter was submitted to the Court for final decision on the merits following the hearing.<sup>1</sup>

There are few decisions that have considered whether the First Amendment implicitly guarantees access to news sources under special conditions such as those here presented.<sup>2</sup> While the right to publish is firmly established, the Amendment's implications in terms of access are not resolved. There is, of course, an absolute right of privacy which the press cannot invade. An individual may refuse to be interviewed. Those who wish to consult or meet in private for the day-to-day conduct of public or business affairs may, in furtherance of their own common right to privacy, exclude the media. These commonly accepted situations are, however, obviously quite distinct from the special circumstances presented by this particular controversy. Here the Bureau has not denied the press access to its own personnel. Rather, it has imposed a bar on persons placed in its care by the courts who may wish to talk with the press and are willing to be interviewed.

There is no law that deprives prisoners of their right to speech by communicating with the press. Indeed, the courts have repeatedly been at pains to point out that the fact of conviction does not automatically deprive prisoners of rights guaranteed under the Constitution. "[A] prisoner does not shed his First Amendment rights at the prison portals." *Brown v. Peyton*, 437 F.2d 1228, 1230 (4th Cir. 1971). Indeed, "A prisoner retains all the rights of an

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Department of Corrections; Raymond E. Penninger, Director of Corrections of the State of California; Noah L. Aldredge, Warden, United States Penitentiary at Lewisburg, Pennsylvania; John A. Norton, Warden, Federal Correctional Institution at Danbury, Connecticut; and Norman A. Carlson, Director, Federal Bureau of Prisons.

<sup>1</sup> Because of the constitutional issues the proceedings were expedited. The complaint was filed March 10, 1973, the TMO was denied March 13, 1973, and the full hearing was held March 23.

<sup>2</sup> In addition to cases cited elsewhere in this opinion, see generally, *Gonzalez v. American Press Co.*, 397 U.S. 238, 56 M.C. 444, 80 L.Ed. 660 (1970); *Orneland v. Torre*, 359 F.2d 848 (2d Cir. 1959), cert. denied, 359 U.S. 910, 79 M.C. 237, 8 L.Ed.2d 231 (1959); *Caldwell v. United States*, 434 F.2d 1081 (9th Cir. 1970).

ordinary citizen except those expressly, or by necessary implication, taken from him by law." *Coffin v. Reichard*, 143 F.2d 443, 445 (6th Cir. 1944), cert. denied, 325 U.S. 887, 65 S.Ct. 1508, 89 L.Ed. 2001 (1945). While "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights . . .," reasonable necessity, to be determined on a case-by-case basis, must dictate any official retraction of such rights. *Price v. Johnston*, 334 U.S. 266, 285-286, 68 S.Ct. 1049, 1060, 92 L.Ed. 1356 (1948). The courts have repeatedly preserved First Amendment rights of prisoners to the free exercise of religion, *Cooper v. Pate*, 378 U.S. 546, 84 S.Ct. 1733, 12 L.Ed. 2d 1030 (1964); *Brown v. Peyton*, *supra*; *Barnett v. Rodgers*, 133 U.S.App.D.C. 296, 410 F.2d 995 (1969); *Long v. Parker*, 390 F.2d 816 (3rd Cir. 1968); to receive mail, *Palmigiano v. Travisono*, 317 F.Supp. 776 (D.H.I. 1970); to receive newsletters, *Fortune Society v. McGinnis*, 319 F.Supp. 901 (S.D.N.Y. 1970); and, notably, to communicate with the press by uncensored mail concerning prison management, treatment of offenders, or personal grievances, *Nolan v. Fitzpatrick*, 451 F.2d 545 (1st Cir. 1971).

The press can be superficial, overly persistent and sometimes lacking in objectivity, but nonetheless the need to grant substantial press access to prisoners is readily apparent. Prisons are public institutions. The conduct of these institutions is a matter of public concern. Whenever people are incarcerated, whether it be in a prison, an insane asylum, or an institution such as those for the senile and retarded, opportunity for human indignities and administrative insensitivity exists. Those thus deprived of freedom live out of the public's view. It is largely only through the media that a failure in a particular institution to adhere to minimum standards of human dignity can be exposed. Indeed, needed reforms in these areas have often been sparked by press attention. Conversely, secrecy is inconsistent with responsible official conduct of public institutions for it creates suspicion, rumor, indifference, if not distrust. Disinterest causes abuses to multiply. See *Grosjean v. American Press Co.*, *supra*.

The Bureau is not wholly unconscious of these considerations. It recognizes that the public has a legitimate and hopefully continuing interest in its affairs. It has not sought completely to black out the press. Federal penal institutions are open to reasonable press inspection and confidential mail communication between prisoners and the press is permitted. There is no evidence that the Bureau is attempting to conceal. In spite of the serious overcrowding and lack of adequate funds for personnel and essential programs, it is attempting to set a high standard of inmate care.

In refusing to permit press interviews under any circumstances, the Bureau is prompted by considerations of administrative convenience and possible disciplinary or other difficulties which undue press attention to particular inmates may engender, affecting either the individual prisoner or his fellow inmates. The Washington Post insists that the in-depth individual inmate interviews are essential to adequate, fair reporting. It contends that the limited access afforded under the Bureau's policy is wholly inadequate. Communication by correspondence is said to be too impersonal and timeconsuming. In order to write reliable stories, it is suggested, there is a need to observe demeanor, to probe by questioning and to overcome the barrier of semi-illiteracy and suspicion that may inhibit inmates when they write. Prison tours and related conversations with individuals or groups are characterized as too hit-and-miss, too limited, too casual, too unproductive to enable a reporter to probe a given situation.

Since "[t]he right to speak and publish does not carry with it the unrestrained right to gather information," *Zemel v. Rusk*, 381 U.S. 1, 17, 85 S.Ct. 1271, 1281, 14 L.Ed.2d 179 (1964), the issue here tendered is, nonetheless, whether the interview restraint imposed by the Bureau's policy is unduly restrictive. A continuing flat prohibition against press interviews of any prisoner, at any time, under any circumstances, in any institution, is on its face arbitrary. The burden of justification rests upon the defendants. *Cf.*, *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d



965 (1963); *Spelser v. Randall*, 357 U.S. 513, 78 N.Ct. 1332, 2 L.Ed.2d 1460 (1958). It is not a matter of the Court substituting its judgment for the Bureau's but rather whether, given the breadth of the prohibition, it appears after balancing the considerations pro and con that the justification offered is obviously deficient. In short, are the limitations placed on First Amendment freedoms no greater than is necessary to protect the governmental interests asserted? As this inquiry is pursued there is no need to differentiate between the rights of the press and the rights of prisoners committed to the custody of the Bureau. News gathering and news dissemination cannot be dissociated under circumstances such as these where it is assumed there is a mutual desire to communicate and where, in the last analysis, the public right to be informed may well overshadow either of the other two considerations. *Dedong v. Oregon*, *supra*, 299 U.S. at 304-305, 57 N.Ct. 255.

Accordingly, it becomes necessary to examine the Bureau's justification for its absolute interview prohibition with care. Several considerations have prompted the Bureau's decision which was reached only after serious deliberation and study:

(1) Excessive press attention to a relatively few notorious prisoners has detracted measurably from their rehabilitative treatment and imposed administrative difficulties.

(2) When press interviews are held they receive immediate wide attention throughout the prisons and the importance of the prisoner interviewed is exaggerated among other inmates. Thus prisoners receiving wide press attention may become "big wheels" and have their status within the prison community enhanced to a point that seriously interferes with effective discipline. *Seale v. Manson*, 326 F.Supp. 1375 (D.Conn. 1971).

(3) A few prisoners may use the medium of the press to

\* *Sherbert v. Verner*, *supra*; *NAAUP v. Button*, 371 U.S. 415, 88 N.Ct. 839, 9 L.Ed.2d 408 (1963); *United States v. Hobel*, 389 U.S. 258, 88 N.Ct. 419, 19 L.Ed.2d 508 (1967); *Shelton v. Tucker*, 364 U.S. 479, 81 N.Ct. 947, 5 L.Ed.2d 231 (1960); *Dedong v. Oregon*, 299 U.S. 305, 57 N.Ct. 255, 31 L.Ed. 979 (1939).

foster revolt within the walls. All news that goes out comes back in by newspaper, television and radio. Angry words, false accusations and protest geared to violence can light a fuse that erupts the pent-up emotions of inmates who may feel neglected and abused.

These are all real considerations and while somewhat impressionistic, they are supported by experience and advanced in good faith. The Court is satisfied, however, that the interview prohibition is too all-inclusive and that the factors mentioned do not justify a blanket denial of press access to all individual inmates willing to be interviewed. It is possible to prevent the difficulties and excesses feared by far less restrictive measures. Individual interviews may be refused where difficult administrative or disciplinary problems threaten and it goes too far to exclude all inmates from press access through individual interviews.

The National Council on Crime and Delinquency in its proposed model act to provide minimum standards for protection of rights of prisoners would permit press access to individual prisoners for interview. *Crime and Delinquency*, Vol. 18, January 1972, p. 13. See also, *An Introduction to Prison Reform Legislation Clearinghouse Review*, Vol. V, No. 11, March 1972, p. 667. Press interviews are freely permitted throughout the New York City correctional system, by the District of Columbia Department of Corrections, and by several states. (Exhibits 1-8, inclusive). Many tensions are thus relieved. California, for example, long had rules permitting interviews but terminated them after a recent outbreak at one prison attributed in part to many inflammatory interviews permitted a single prisoner. However, its knowledgeable, experienced Director, were it not for questionable legal advice, would still permit interviews in many sectors of his statewide correctional system.

Not only is there a difference in practice and viewpoint among correctional officials on the subject of press interviewing generally, but there is another overriding factor that calls into question the propriety of any blanket prohibition such as that presented in the Bureau's policy. The great bulk of federal prisoners, perhaps as many as ninety

percent, are incarcerated for non-violent crimes. Many of these men and women in federal institutions have completed high school or its equivalent. Many are articulate and thoughtful.

Yet even prisoners released into the community under various training, furlough and other policies placing the prisoner into unsupervised contact with nonprisoners, may still not be allowed to talk with the press. The policy applies not only to the six major penitentiaries but also to the entire far-flung complex of institutions, camps, community treatment centers, minimum security compounds, and schools and business establishments which employ offenders in various special programs.

Moreover, the Bureau is committed to many policies which are increasingly moving offenders out of traditional institutional confinements with a view to expanding community involvement in correctional programs to facilitate successful reintegration into society. *Biennial Reports, U.S. Board of Parole, July 1968-June 1970*, p. 14; and *Federal Bureau of Prisons, 1970-71*. It will further these objectives if the public is kept informed to the fullest extent possible and it will be only through increasing prisoner contact that the press can adequately report on activities and developments affecting those institutions. The contention that legal and practical considerations necessitate the total prohibition is not accepted.

To date, except in very special circumstances, the press generally has shown little interest in our prisons and the public has shown almost a callous disregard for the urgent needs of these imperfect institutions. The quality of a society may be measured by the manner in which it treats its criminal offenders. There is now, fortunately, a growing concern in this area expressed by the Executive, the Courts and the bar. Much wider press interest and more general public concern should be encouraged.<sup>7</sup>

<sup>7</sup> "[T]he widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. . . ." *Associated Press v. United States*, 326 U.S. 1, 20, 65 S.Ct. 1416, 1424, 80 L.Ed. 2018 (1948).

The Bureau's no-interview policy violates the First Amendment by unqualifiedly denying the press the right to interview inmates. The rules of the Bureau must be more precisely drawn to prohibit interviews only where it can be clearly established that serious administrative or disciplinary problems are being created.\* There are obviously less drastic means for accommodating the Bureau's proper purpose and still accommodating the strictures of the First Amendment.† Any outright restraint upon the ability of the press to gather information places a heavy burden on those who seek to justify it and the burden in this instance has not been met. *NAAACP v. Button, supra; Shelton v. Tucker, supra*. Distinctions can readily be drawn to differentiate types of institutions and prisoners in the same or different categories. The thrust of new press regulations should be to permit uncensored confidential interviews wherever possible and to withhold permission to interview on an individual basis only where demonstrable administrative or disciplinary considerations dominate. There is no necessity to treat all inmates alike and it will be appropriate to recognize a high degree of discretion in individual prison administrators. The Bureau will be well advised to seek the advice of experienced newsmen, to leave room for experimentation and to move toward more flexibility in its policies and procedures governing prisoner-press contacts. (See tr. p. 134).

Defendants are directed to issue in thirty days a modified rule governing interviews consistent with this opinion. In the interim, interview requests must be considered on an individual basis. Defendants will be enjoined from enforcing the blanket interview prohibition now contained in the Bureau's Policy Statement.

The complaint contains not only a broad attack on the Bureau's Policy Statement but a specific demand for im-

\* The Court recognizes the proper reluctance of Courts to interfere with a prison's internal discipline and can accept without difficulty the rationale of such decisions as *Burnham v. Oswald*, 333 F.Supp. 1128 (W.D.N.Y. 1971), but it cannot agree with the broader view taken by the learned Judge in *Smith v. Bouda*, No. 8914 (E.D.N.C. March 14, 1972) for the reasons stated herein.

† See cases cited note 6 *supra*.

mediate access to interview prisoners at Lewisburg and Danbury. This special request requires brief comment. After the complaint was filed, the Wardens of both institutions offered Bagdikian the opportunity to interview selected prisoners in a group without supervision or censorship but under time restrictions and to visit solitary where ringleaders were allegedly being held. Full advantage was not taken of these proffers, perhaps for reasons of litigating strategy. Only one inmate correspondent has apparently indicated a desire to be interviewed. Some of the prisoners involved are reported to be testifying in other public proceedings. The mails remain open. Under these circumstances, the Court declines to order the defendants to allow the specific interviews desired. These particular interview denials are invalid. They should be reconsidered by the Bureau in the light of this Memorandum Opinion and post-hearing developments. The request for mandatory or other emergency relief is denied. Plaintiffs' motion to reopen the record is denied.

The foregoing shall constitute the Court's findings of fact and conclusions of law. The parties shall submit an appropriate order within five days.

## APPENDIX

**BUREAU OF PRISONS WASHINGTON, D. C. 20537**

### **Policy Statement**

**1220.1A**

**SUBJECT: INMATE CORRESPONDENCE  
WITH REPRESENTATIVES OF  
THE PRESS AND NEWS MEDIA**

**2-11-72**

1. **PURPOSE.** This Policy Statement establishes the policy of the Bureau of Prisons, with respect to contacts with the press. The purpose is to protect First Amendment rights of inmates, within the constraints of sound institutional management.
2. **POLICY.** Recognizing the right of inmates to have access to the news media, inmates may correspond freely with representatives of the press. Representatives of the press are encouraged to visit Bureau of Prisons institutions, to learn about and report on correctional facilities, activities, and programs.
3. **DIRECTIVE AFFECTED.** Policy Statement 1220.1 is superseded by this Policy Statement.
4. **PROCEDURE.**

**a. Application**

This Policy Statement applies to the news media, which is defined as the following:

A newspaper entitled to second class mailing privileges; a magazine or periodical of general distribution; a national or international news service; a radio or television network or station.

**b. Procedure**

(1) An inmate may write to a representative, specified by name or title, of the news media. Correspondence to a newsmen may be sent through the Prisoners Mail Box, which provides opportunity for unopened correspondence with officials such as

congressmen, judges, and other government officers. It shall be forwarded directly, promptly, sealed, and without inspection.

(2) A representative of the news media may initiate correspondence with a particular inmate. Incoming correspondence from the news media will be inspected solely for contraband, or for content which would incite conduct which is illegal. Rejected correspondence will be returned to the sender, with an explanation. Questions to the inmate may be presented through this correspondence, and the inmate may respond through the Prisoners Mail Box.

(3) The inmate shall not receive any compensation, nor anything of value, for material submitted through this means to the media.

(4) A transmittal slip, similar to the enclosed sample, will be attached to the outgoing PMB letter, and the mail will be sent each working day, in an institution envelope, and at government expense. Facilities with substantial numbers of psychiatric patients may also attach a statement, indicating that there are inmates in the facility who are psychotic, who have been found to be incompetent or of unsound mind, or who have other psychiatric problems.

(5) Representatives of the press are encouraged to visit Bureau institutions for the purpose of preparing reports about institutional facilities, programs and activities. Press representatives should make advance appointments for visits. During an institutional emergency, the Chief Executive Officer may suspend all such press visits. During the emergency, information concerning the situation will be provided regularly to the press.

(6) Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted



with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities.

(7) When media representatives visit institutions, photographs of programs and activities may be taken. Inmates have the right not to be photographed by the press. Visiting press representatives should be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged, but if taken, releases must be signed by the inmates.

(8) Press representatives may visit schools or business establishments which employ offenders in community programs, if the permission of the school or employer is obtained in advance. The rules outlined in paragraphs (6) and (7) above apply equally in the community situation.

(9) Announcements of unusual incidents shall be made to local news media as promptly as possible by the Chief Executive Officer or by a staff member designated by him. The institution will prepare a statement for release to the media, briefly stating the facts. The text of such messages shall be transmitted to the Bureau as part of the reports required on the incidents to which they relate. If it can reasonably be assumed that the wire services or the Washington press will make inquiry at the Central Office, the text should be communicated to the Central Office by telephone.

(10) Announcements related to Bureau policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Central Office. Press inquiries on such subjects shall be referred to the Bureau Director.

(11) Information about an inmate that is a matter of public record will be provided by the Chief

Executive Officer or his representative to representatives of the news media upon request. Such information shall be limited to the inmate's name, age, offense for which convicted, court where sentenced, length of sentence, date of sentencing, date of arrival or transfer, general institutional assignment, parole eligibility date, and date of expiration of sentence. Other contents of inmate files are confidential. Requests for additional information about individual inmates shall be referred to the Central Office. The Chief Executive Officer of each institution, or his designated representative, shall be solely responsible for contacts with the press. Other staff members shall refer all press inquiries to the Chief Executive Officer.

(12) Representatives of the media are encouraged to notify the Chief Executive Officer before publication or dissemination of information in inmate correspondence, whenever statements naming individual inmates or staff members are made in that correspondence. In such instance, the institution will give all possible assistance in providing background and a specific report on the statement provided by the inmate.

c. *Exceptions*


Requests for exceptions to the above regulations may be made to the Director of the Bureau. Any disputes as to meaning or application of the regulations will be resolved by the Director.

(s) Norman A. Carlson  
**NORMAN A. CARLSON**  
 Director, Bureau of Prisons

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**DECLARATION AND ORDER**

The case having come on for trial on March 23, 1972, on plaintiffs' motion for preliminary relief, the parties at the



trial having consented to the submission of the entire case for final disposition on the merits, the Court having heard testimony and considered briefs, and the Court having issued a Memorandum Opinion containing findings of fact and conclusions of law on April 5, 1972, it is this 11th day of April, 1972, hereby

**Declared:**

1. That the first two sentences of paragraph 4(b)(6) of the Bureau of Prisons Policy Statement 1220.1A dated, February 11, 1972, prohibiting all interviews by members of the press with inmates in the custody of the Bureau, are in violation of the First Amendment to the Constitution of the United States.

2. That defendant's denials of permission to plaintiffs to interview identified inmates at the federal correctional institutions in Danbury, Connecticut, and Lewisburg, Pennsylvania, made in reliance on Policy Statement 1220.1A, were in violation of the First Amendment.

3. That under the First Amendment, subject to reasonable restrictions as to time and place, the press has a right of access to interview confidentially and without censorship any inmate of a federal correctional institution who consents to be interviewed, except where it is determined that serious administrative or disciplinary problems are likely to result from the particular interview sought; and it is hereby

**Ordered:**

1. That defendants and personnel of the Federal Bureau of Prisons subject to their direction and control, are hereby enjoined from enforcing the blanket prohibition of press interviews with inmates contained in the first two sentences of paragraph 4(b)(6) of the Bureau of Prison's Policy Statement 1220.1A, dated February 11, 1972.

2. That defendants shall issue not later than 30 days from the date of this Order new rules governing press interviews with inmates in the custody of the Federal Bureau of Prisons. Such rules shall satisfy the following conditions:

a. The rules shall establish a general policy of the Fed-

eral Bureau of Prisons to permit, subject to reasonable restrictions as to time and place, confidential, uncensored press interviews with any inmates willing to be interviewed.

b. If the rules authorize any exception to the general policy, the exception shall be precisely drawn to prohibit an interview only where it can be established as a matter of probability on the basis of actual experience that serious administrative or disciplinary problems are, in the judgment of the prison administrators directly concerned, likely to be created by the interview because of either the demonstrated behavior of the inmate concerned or special conditions existing at the inmate's institution at the particular time the interview is requested.

3. That between the date of this Order and the issuance of the new regulations, defendants shall consider on an individual basis requests by the press to interview inmates who may be willing to be interviewed, and if such inmates are willing to be interviewed defendants shall grant such interviews except where it can be established that serious administrative or disciplinary problems would be created by the interview sought.

## **APPENDIX B**

**The WASHINGTON POST CO., and  
Ben Bagdikian, Plaintiffs,**

**v.**

**Richard G. KLEINDIENST, and Norman  
A. Carlson, Defendants.**

**Civ. A. No. 467-72.**

**United States District Court,  
District of Columbia.**

**Dec. 19, 1972.**

### **SUPPLEMENTAL MEMORANDUM**

**GESELL, District Judge.**

The additional evidentiary hearings ordered by the United States Court of Appeals for the District of Columbia Circuit, 477 F.2d 1168, have reinforced this Court's previously stated views as to both the facts and the law.

At the supplementary hearings, testimony was taken over a two-day period from Arthur L. Liman, General Counsel of the New York State Special Commission on Attica; Roy M. Fisher, Dean of the School of Journalism, University of Missouri; John O. Boone, Commissioner of the Massachusetts State Department of Corrections; Timothy Leland, Assistant Managing Editor of the *Boston Globe*; Noah L. Aldredge, Warden, U. S. Penitentiary, Terre Haute; Floyd L. Wainwright, Director, Florida Division of Corrections; Lou V. Brewer, Warden, Iowa State Penitentiary; and Norman A. Carlson, Director of the Federal Bureau of Prisons. Numerous exhibits were received. The parties submitted proposed findings of fact and briefs.

No further extended discussion is necessary. It is appropriate, however, to respond to the specific inquiries contained in the Order. The Court has determined on the

basis of detailed factual findings filed herewith that private personal interviews are essential to accurate and effective reporting. Ethical newspapers rarely publish articles based on unconfirmed letter communications. Reliability of such information must be determined by face-to-face confrontation. This is universally recognized by experienced journalists and demonstrated by the results of many confidential interviews conducted during the recent Attien investigation. Testimony of Laman and Fisher and the Attien Report itself are particularly persuasive on this key issue. *Kleindienst v. Mandel*, 408 U.S. 753, 765, 92 S.Ct. 2576, 33 L.Ed.2d 683 (1972), recognizes the intimate relationship between personal contact and the First Amendment's guarantees.

The "big wheel" justification did not withstand analysis. While the term is found in *Scalia v. Manson*, 326 F.Supp. 1376 (D.Conn.1971), it has no precise meaning. Apparently it refers to prisoners whose militancy, tendency to act out and negative influence within a prison community make it likely that sustained press interviews and attention involving them may spark disruptive conduct by inmates within the walls. Not all prominent offenders or prison leaders fall in this category. The very few who do are usually, if not always, identifiable in advance. Interviews with such prisoners can be requested specially. The "big wheel" justification cannot, however, be used to stifle expression by any leader in the prison community who may differ with the warden and certainly it goes too far afield to blanket all federal prisoners under this rhetoric for the obvious purpose of stultifying dissent.

The further justification offered that all prisoners must be treated the same because if interviews are permitted in some instances and restricted in others, prison authorities will encounter administrative difficulties, provides no justification for the challenged regulation. This natural desire of federal prison authorities to avoid inconvenience cannot be interposed to defeat insistent demands of the First Amendment. There are, to be sure, situations where press access to individual prisoners should on occasions be denied either because of conditions prevailing at the moment

in a particular institution or for other reasons. Some prominent prisoners who exhibit no tendency to unruliness or disruption, for example, may attract such excessive press attention to the point that this interferes with the ability of the institution to adjust the prisoner to appropriate routine. Others may, after interviews, become identifiable as sources of disruption and some measure of control becomes appropriate.

The evidence strongly shows, however, the inappropriateness of a total interview ban and the necessity and feasibility of pursuing a more flexible approach based on individualized judgments in particular cases. Many city and state penal institutions, apparently the majority, permit interviews. There is nothing significant that distinguishes the bulk of federal prisoners from state prisoners except possibly the need to assure that the federal system as an acknowledged pace setter gives the fullest and most explicit formal recognition to constitutional rights of prisoners.

The Bureau of Prisons misconceives its obligation as a public institution. It has no absolute right to exclude the press. On the contrary, it has an obligation to lay open its activities to searching public scrutiny except to the extent that it can affirmatively establish a compelling necessity to limit press access. There is an important and continuing discourse about our prisons, and the "right to receive information" necessary to convey developments to the public is within the scope of protections afforded by the First Amendment. *Kleindienst v. Mandel, supra*, 408 U.S. at 764-765, 92 S.Ct. 2576.

The Court of Appeals has solicited an expression from this Court as to any other consideration that may have a bearing on the issues. Accepting this invitation, it should be apparent that at no time in recent memory has there been such general public concern with prisons and prison conditions. There is much to suggest that prison facilities are often inadequate, funds are lacking or misspent, prisoners with some frequency are abused or mistreated, escapes are frequent, guards are too permissive or sadistic, discipline is lacking, and riots and strikes are everyday occurrences.



Society is searching for an understanding of why these institutions appear so often to breed crime and lack satisfactory vocational and effective rehabilitative programs. In several states whole prison systems or major units have been found so lacking that they have been declared offensive under the Eighth Amendment. Trial judges are frustrated, for the intentment of the law is lost in a maze of bureaucratic inadequacies that frustrate effective sentencing. Many prison officials share these concerns. In short, this is a time of questioning and reappraisal when the expense, the futility and the inadequacies of present procedures for incarceration have again come into sharp focus.

No one can responsibly contend that prisoners do not have a point of view and experience that should in some degree affect the resolution of many problems highlighted by the current debate. Certainly no one can successfully contend that in these circumstances the press does not have a vital role to play.

The rule adopted by the Bureau of Prisons is a rule of comfortable convenience and not of compelling necessity. It simply serves to prevent too sharp an inquiry into official conduct. Prisons are not walled off sanctuaries like the Pentagon Map Room or the Justices' conference table at the Supreme Court. Prisons are villages in themselves. Families, lawyers, congressmen, clergymen and friends visit in public interview space provided. Newspapers, magazines, radio and television programs pour in incessantly throughout the day. Within the prison walls there is illness, drug distribution, prostitution and many other matters of everyday occurrence on the outside. Crimes are committed and punishments imposed during incarceration. Inmates are of varying ages, political persuasions and background. Some prisoners come and go on furlough or compassionate leave. Mail is substantially uncensored. Local communities are urged to participate in the affairs of these institutions by rendering neighborly family counselling and support. Indeed, half-way houses, vocational and educational programs, and other community ventures include prisoners serving time. The press has an obvious role to report the

successes and failures of these prison communities and there is no apparent reason why this should differ substantially from the role it normally plays on the outside. The need for public understanding and legislative support of penal institutions is obvious. This will not be forthcoming without knowledge based on informed discussions. The official pronouncements of the keepers need to be tested against the realities of incarceration. It is wholly inconsistent with an open democratic society to allow the state to seal off from press scrutiny thousands of men and women who have been charged with or found to have committed criminal offenses. Certainly the courts that commit these offenders have a responsibility under the Constitution to preserve those rights and freedoms which violation of the criminal laws has never been held to remove.

Nothing in *Branzburg v. Hayes*, 408 U.S. 665, 92 S.Ct. 2646, 38 L.Ed.2d 626 (1972), suggests a conclusion different from that reached by the Court on the issues here presented. The Court there emphasized that news gathering qualifies under the First Amendment and newsmen must be afforded some protection for seeking out the news lest freedom of the press be eviscerated. *Id.* at 681, 707, 92 S.Ct. 2646. The Court recognized that right of access can only be infringed where the Government demonstrates a "compelling" or "paramount" need. And as Justice Powell, whose vote was necessary to obtain the majority, stressed in his concurring opinion, a balance must be attempted between constitutional and societal interests on a case-by-case basis. *Id.* at 709, 710, 92 S.Ct. 2646. Here newsmen merely seek the same rights to interview at prisons which are afforded relatives, clergymen, congressmen, friends and attorneys, as traditionally available to the public. This is not a case involving any invasion of privacy, interference with national security nor conduct that might in some fashion contravene court processes or other constitutional needs. It is not a mere "reasonable time, place and manner" regulation. The sources of news are solely in the prisons. No alternative satisfactory sources are available and the press claims its proper right of access. While this access may be limited in

Individual circumstances, the Government has totally failed to demonstrate any "compelling" or "paramount" need. The absolute ban cannot withstand attack.

Other recent decisions are to the same effect. In *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, 92 S.Ct. 2286, 38 L.Ed.2d 212 (1972), the Court struck down a city ordinance which permitted peaceful labor picketing but prohibited other peaceful picketing. In holding this ordinance offensive under the First Amendment, the Court noted that "predictions about imminent disruption from picketing involve judgments appropriately made on an individualized basis, not by means of broad classifications." *Id.* at 100-101, 92 S.Ct. at 2293. This is particularly pertinent, as the decision suggests, in view of the classification here that singles out newsmen to prevent them from exercising interview rights freely given others who present no lesser threat. Similarly, in *Women Strike for Peace v. Morton*, D.C. Cir., 472 F.2d 1273 (1972), the United States Court of Appeals for the District of Columbia Circuit gave further emphasis to the well-established proposition that any regulations affecting First Amendment conduct must be "precisely worded and specifically directed toward identifiable abuses." *Id.*, Wright, J., conc., at 1285.

In this Court's prior opinion numerous other decisions were cited which are all to the same effect. Each regulation challenged under the First Amendment must be viewed in the light of its own special circumstances and there is no automatic litmus test which can be applied in determining the scope and effect of the Amendment. Where broad, all-inclusive restrictions are placed in effect, it is particularly important for the state to justify the restrictions with solid fact, not surmise. In this instance the Bureau of Prisons has totally failed to meet this burden and the regulation must be condemned. The Bureau's regulation represents a continuing denial of First Amendment rights.

The stay entered by the Supreme Court of the United States, 406 U.S. 912, 92 S.Ct. 1761, 32 L.Ed.2d 112 (1972), has resulted in a continuing serious suppression of para-

mount constitutional rights which requires immediate attention. A free press cannot be fostered in an atmosphere that delays publication on matters of current public concern. The Courts have a responsibility to lift pre-publication restraints, not to encourage them, and must adjust their deliberative process accordingly.

Because the first two sentences of paragraph 4(b)(6) of the Bureau of Prisons Policy Statement 1220.1A dated February 11, 1972, prohibiting all interviews by members of the press with inmates in the custody of the Bureau, are in violation of the First Amendment to the Constitution of the United States, and because defendants' denials of permission to plaintiffs to interview identified inmates at the federal correctional institutions in Danbury, Connecticut, and Lewisburg, Pennsylvania, made in reliance on Policy Statement 1220.1A, were in violation of the First Amendment, a new regulation is clearly necessary.

Under the First Amendment, subject only to reasonable restrictions as to time and place, the press has a right of access to interview confidentially and without censorship any inmate of a federal correctional institution who consents to be interviewed, except where it is determined that serious administrative or disciplinary problems are likely to be directly and immediately caused by the particular interview sought. If such rules authorize any exception to the general policy, the exception must be precisely drawn to prohibit an interview only where it can be established as a matter of probability on the basis of actual experience that serious administrative or disciplinary problems are, in the judgment of the prison administrators directly concerned, likely to be directly and immediately caused by the interview because of either the demonstrated behavior of the inmate concerned or special conditions existing at the inmate's institution at the particular time the interview is requested.

In addition to findings of fact and conclusions of law contained in the Court's two Memoranda, the Court makes the following findings of fact by reference to proposed findings filed by the parties:

The Court adopts each of plaintiffs' proposed findings, except Nos. 29 through 46, and No. 51;

The Court adopts each of plaintiffs' proposed conclusions of law.

Defendants' proposed findings of fact and conclusions of law are rejected.

## APPENDIX C

**The WASHINGTON POST COMPANY et al.**

**v.**

**Richard G. KLEINDIENST, Acting Attorney General of the  
United States, et al., Appellants.**

**No. 72-1562.**

United States Court of Appeals,  
District of Columbia Circuit.

Argued June 30, 1972.

Decided Sept. 6, 1972.

### ORDER

#### PER CURIAM.

This case came on for hearing on an appeal from a ruling by the District Court, reflected in a memorandum opinion dated April 9, 1972, 357 F.Supp. 770, that the policy of the Federal Bureau of Prisons in denying all requests by the press to interview designated prisoners violated the First Amendment. The Court directed the Bureau to modify its rules within 30 days to permit such interviews under terms and conditions appropriately reflective of administrative and disciplinary considerations. That decision is presently subject to a stay by the Supreme Court, issued May 13, 1972, pending appeal in this court.

At the oral argument, the Government pressed upon us a supervening decision by the Supreme Court in *Branzburg v. Hayes*, 408 U.S. 665, 92 S.Ct. 2646, 33 L.Ed.2d 626, decided June 29, 1972, as representing a significant limitation by the Supreme Court of the reach of the First Amendment in relation both to the precise issue immediately involved in the three cases then decided, and to the general area of press guarantees. *Branzburg*, unlike the case before us, compelled revelation by reporters to grand juries of infor-

mation gathered by them, but the First Amendment claim rested heavily upon the assertion that access to information would be restricted if such compulsion was exerted. One of the cases heard by the Supreme Court with *Branzburg* and reversed by it, *Caldwell v. United States*, 434 F.2d 1081 (9th Cir. 1970), was cited by the District Court as relevant to the scope of press access.

Since the case before us deals with the scope of First Amendment rights to access, *Branzburg* supplies a new element to be considered in the decisional process which was not in existence at the time the record was made and the conflicting claims resolved in the District Court. It seems obvious that considerations of sound judicial administration suggest that any record for future appellate consideration be made in awareness of it, if that is feasible under the circumstances, as it is here.

Accordingly, we have concluded, while retaining jurisdiction of this appeal, to remand the record for such further consideration as the District Court may wish to give the case in the light of *Branzburg* and, in any event, for specific findings (which may follow upon further evidentiary proceedings) with respect to the following:

1. The extent to which the accurate and effective reporting of news has a critical dependence upon the opportunity for private personal interviews.
2. The extent to which the so-called "big wheel" justification has any tangible footing in a significantly wide spectrum of experience in prison administration.
3. The factual foundations for any other asserted justifications for blanket prohibition of private personal interviews.
4. Whether there may be a valid basis for a ban, in the interest of avoiding impairment of good order, as to a particular prisoner or prisoners, even in the absence of a prior history of unruliness or disruptiveness.
5. Whether it is unfeasible to pursue a flexible approach to the allowance of private personal interviews, with



appropriate scope for the judgment of the responsible prison officials and their consideration of administrative convenience or necessity.

6. Any other matters which, in the view of the District Court, by reference to *Bransburg* or otherwise, would further refine and illuminate the competing claims and assertions made by the parties so that ultimate resolution of the news access right under the First Amendment claimed in this instance may be as informed as possible. By reason of the foregoing, it is hereby

Ordered that the record in this case is remanded to the District Court for the purposes hereinabove stated and, upon the conclusion of proceedings held hereunder, shall as supplemented be returned to this court for further consideration of the pending appeal.

## **APPENDIX D**

### **BUREAU OF PRISONS**

**WASHINGTON, D. C. 20007**

#### **Policy Statement**

**SUBJECT: INMATE CORRESPONDENCE WITH REPRESENTATIVES OF THE PRESS AND NEWS MEDIA** 2-11-72

1. **PURPOSE.** This Policy Statement establishes the policy of the Bureau of Prisons, with respect to contacts with the press. The purpose is to protect First Amendment rights of inmates, within the constraints of sound institutional management.
2. **POLICY.** Recognizing the right of inmates to have access to the news media, inmates may correspond freely with representatives of the press. Representatives of the press are encouraged to visit Bureau of Prisons institutions, to learn about and report on correctional facilities, activities, and programs.
3. **DIRECTIVE AFFECTED.** Policy Statement 1220.1 is superseded by this Policy Statement.
4. **PROCEDURE.**

##### *a. Application*

This Policy Statement applies to the news media, which is defined as the following:

A newspaper entitled to second class mailing privileges; a magazine or periodical of general distribution; a national or international news service; a radio or television network or station.

**b. Procedure**

- (1) An inmate may write to a representative, specified by name or title, of the news media. Correspondence to a newsman may be sent through the Prisoners Mail Box, which provides opportunity for unopened correspondence with officials such as congressmen, judges, and other government officers. It shall be forwarded directly, promptly, sealed, and without inspection.
- (2) A representative of the news media may initiate correspondence with a particular inmate. Incoming correspondence from the news media will be inspected solely for contraband, or for content which would incite conduct which is illegal. Rejected correspondence will be returned to the sender, with an explanation. Questions to the inmate may be presented through this correspondence, and the inmate may respond through the Prisoners Mail Box.
- (3) The inmate shall not receive any compensation, nor anything of value, for material submitted through this means to the media.
- (4) A transmittal slip, similar to the enclosed sample, will be attached to the outgoing PMB letter, and the mail will be sent each working day, in an institution envelope, and at government expense. Facilities with substantial numbers of psychiatric patients may also attach a statement, indicating that there are inmates in the facility who are psychotic, who have been found to be incompetent or of unsound mind, or who have other psychiatric problems.
- (5) Representatives of the press are encouraged to visit Bureau institutions for the purpose

of preparing reports about institutional facilities, programs and activities. Press representatives should make advance appointments for visits. During an institutional emergency, the Chief Executive Officer may suspend all such press visits. During the emergency, information concerning the situation will be provided regularly to the press.

- (6) Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities.
- (7) When media representatives visit institutions, photographs of programs and activities may be taken. Inmates have the right not to be photographed by the press. Visiting press representatives should be requested to obtain permission before photographing inmates and should be advised that full front view photos of inmates are not encouraged, but if taken, releases must be signed by the inmates.
- (8) Press representatives may visit schools or business establishments which employ offenders in community programs, if the permission of the school or employer is obtained in advance. The rules outlined in paragraphs (6) and (7) above apply equally in the community situation.
- (9) Announcements of unusual incidents shall be made to local news media as promptly as possible by the Chief Executive Officer or by a staff member designated by him. The institution will prepare a statement for release

to the media, briefly stating the facts. The text of such messages shall be transmitted to the Bureau as part of the reports required on the incidents to which they relate. If it can reasonably be assumed that the wire services or the Washington press will make inquiry at the Central Office, the text should be communicated to the Central Office by telephone.

- (10) Announcements related to Bureau policy, such as changes in institutional missions, type of inmate population, or physical facilities, as well as announcements of changes in executive personnel, will be made by the Central Office. Press inquiries on such subjects shall be referred to the Bureau Director.
- (11) Information about an inmate that is a matter of public record will be provided by the Chief Executive Officer or his representative to representatives of the news media upon request. Such information shall be limited to the inmate's name, age, offense for which convicted, court where sentenced, length of sentence, date of sentencing, date of arrival or transfer, general institutional assignment, parole eligibility date, and date of expiration of sentence. Other contents of inmate files are confidential. Requests for additional information about individual inmates shall be referred to the Central Office. The Chief Executive Officer of each institution, or his designated representative, shall be solely responsible for contacts with the press. Other staff members shall refer all press inquiries to the Chief Executive Officer.
- (12) Representatives of the media are encouraged to notify the Chief Executive Officer before publication or dissemination of information

in inmate correspondence, whenever statements naming individual inmates or staff members are made in that correspondence. In such instance, the institution will give all possible assistance in providing background and a specific report on the statement provided by the inmate.

*c. Exceptions*

Requests for exceptions to the above regulations may be made to the Director of the Bureau. Any disputes as to meaning or application of the regulations will be resolved by the Director.

/s/ Norman A. Carlson  
 NORMAN A. CARLSON  
 Director, Bureau of Prisons

## **Attachment 1**

**(Sample Transmittal Slip)**

### **UNITED STATES PENITENTIARY Leavenworth, Kansas**

**Date**

The attached letter was placed in our Prisoners Mail Box for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a problem over which this institution or the Bureau of Prisons has jurisdiction, you may wish to write to me or to the Director, Bureau of Prisons, Department of Justice, Washington, D. C. 20537.

You may write back to the inmate, and ask him questions. Your letter will be inspected for contraband, and for any content which would incite illegal conduct.

The Bureau of Prisons encourages the press to visit institutions, and learn about correctional programs and activities. If you wish to do this, please contact me.

Inmates may not receive compensation for material submitted to the media. If the person writing you names another inmate or a staff member in his correspondence, we request that you advise us of that fact before its publication. We will provide background information and specific comments whenever possible.

If the writer encloses for forwarding correspondence addressed to another addressee, please return the enclosure to me, or to the Director.

**Warden**



## APPENDIX E

### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

WASHINGTON POST Co., et al.,  
Plaintiffs

vs.

Civil Action No. 407-79

RICHARD KLEINDIENER, et al.,  
Defendants.

#### PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, after full hearing, makes the following findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

#### FINDINGS OF FACT

##### 1. *The Parties and Nature of the Action*

1. This is an action for declaratory and injunctive relief raising important questions concerning the rights of newsmen under the First Amendment to have access to federal prison facilities to conduct private, individual interviews with inmates confined to those facilities. The Court has jurisdiction of this action under 28 U.S.C. 1331, 1361, 2201 and 2202.

2. Plaintiff Washington Post Company is a Delaware corporation doing business in Washington, D.C. It publishes *The Washington Post*, a newspaper with a daily circulation in excess of 500,000 in the Washington metropolitan area and throughout the United States.

3. Plaintiff Ben H. Bagdikian was, at the time this action was filed, a reporter and an Assistant Managing Editor of *The Washington Post*. He has had extensive experience in reporting on prisons and has published in *The Washing-*

ten Post a comprehensive series of articles on prisons in the United States. Tr. I, pp. 210 (Bagdikian testimony).<sup>1</sup>

4. Defendant Richard G. Kleindienst is the Attorney General of the United States and, as such, has responsibility for and control over the policies and practices of the United States Department of Justice and its component divisions and bureaus, including the Bureau of Prisons.

5. Defendant Norman A. Carlson is Director of the Federal Bureau of Prisons and, as such, has direct responsibility for and control over the policies and practices of the Federal Bureau of Prisons.

6. The events leading to this litigation began with work stoppages that occurred at the federal prison facilities at Lewisburg, Pennsylvania, and Danbury, Connecticut toward the middle of February, 1972. Plaintiff Bagdikian learned of the work stoppages from various sources and subsequently received reports that inmates who had served on negotiating committees during the work stoppages had been the object of reprisals. Tr. I, pp. 11-12, 20, 57 (Bagdikian testimony).

7. Notified that the work stoppages and their aftermath constituted newsworthy events, Tr. I, p. 20 (Bagdikian testimony), Mr. Bagdikian called the Federal Bureau of Prisons on March 1, 1972 and asked permission to visit both Lewisburg and Danbury to interview members of the inmate negotiating committees and other inmates who had written to him with complaints. An official of the Bureau of Prisons informed Mr. Bagdikian that existing regulations did not permit such interviews. Tr. I, pp. 12-13 (Bagdikian testimony).

8. On March 2, 1972, Mr. Bagdikian repeated his request of March 1 in a letter written to defendant Carlson. Com-

<sup>1</sup> Citations contained herein will be designated as follows: "Tr. I" refers to the Transcript of the hearing conducted on March 22, 1972; "Tr. II" refers to the Transcript of the hearing conducted on November 21 and 22, 1972; "PX" refers to exhibits offered by the plaintiffs at the two hearings; "DX" refers to exhibits offered by the defendants at the two hearings. In addition, the Official Report of the New York State Special Commission on Attica, which is Plaintiff's Exhibit No. 9, will be referred to throughout as "Attica Report."

plaint Exh. C. By a letter also dated March 2, 1972, Mr. Carlson formally denied Mr. Bagdikian's request because "the Bureau of Prisons' policy does not permit press interviews with inmates." Complaint, Exh. D. On the basis of those denials, the plaintiffs initiated this action.

9. The current policy of the Federal Bureau of Prisons with respect to interviews and other communications between members of the news media and inmates is contained in Bureau of Prisons Policy Statement 1220.1A, dated February 11, 1972, and entitled "Inmate Correspondence with Representatives of the Press and News Media," Complaint, Exh. D.

10. The term "interview," as used in the Policy Statement, refers to a face-to-face oral communication that is planned in advance, involves a previously designated inmate, and lasts a sufficient time to permit an in-depth discussion.

11. Policy Statement 1220.1A prohibits all interviews between newsmen and inmates in all circumstances, regardless of the characteristics and record of the inmate sought to be interviewed, the willingness of the inmate to be interviewed, the institution in which he is held, conditions prevailing at that institution, the newsmen's reason for seeking an interview, and any other factors. The prohibition of interviews is total, Policy Statement, §4(b)(6), and extends to "schools or business establishments which employ inmates in community programs." *Id.*, §4(b)(8). Thus even prisoners released into the community under various training, furlough and other programs involving unsupervised contact with non-prisoners may not be interviewed by the news media. The no-interview policy applies uniformly to the six major federal penitentiaries and the entire far-flung complex of institutions, camps, community treatment centers, minimum security compounds, and schools and business establishments which employ offenders in various special programs.

12. Policy Statement 1220.1A permits a newsmen to hold

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\* Hereinafter referred to as "Policy Statement 1220.1A."

a "conversation . . . with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities." §4(b)(6).

a. The distinction between an "interview" and a "conversation" is not explained in Policy Statement 1220.1A.

b. Director Carlson characterized a conversation as "something spontaneous" and lasting "five to ten minutes." Tr. I, p. 189 (Carlson testimony). Although there was some variation in how the term "conversation" was understood by the two federal wardens who testified, their interpretations were substantially similar to that of Mr. Carlson. See Tr. I, pp. 140-141, 164-165 (Alldredge testimony); *id.*, at 175-77 (Norton testimony).

c. In general, conversations, within the meaning of Policy Statement 1220.1A, occur when a newsman is taking a guided tour of an institution and stops to ask an inmate about the food, or the training programs, or some similar matter. *Id.*

d. The term "institutional facilities, programs and activities" in §4(b)(6) refers to ongoing programs for the inmate population. It does not include inmate strikes and similar disturbances of normal prison routine. Tr. I, pp. 19-20 (Bagdikian testimony); *but cf. id.* at 154, 166 (Alldredge testimony).

13. Policy Statement 1220.1A apparently permits a newsman to interview a randomly selected group of inmates at a federal correctional facility. Tr. I, p. 217 (Carlson testimony).

a. Policy Statement 1220.1A does not in terms or by implication authorize such group interviews.

b. Plaintiff Bagdikian was permitted to conduct an interview with a randomly selected group of inmates at Lewisburg Penitentiary. Tr. I, pp. 15-17 (Bagdikian testimony). He was offered the same opportunity at Danbury Correctional Facility. Tr. I, p. 18 (Bagdikian testimony).

c. Warden Alldredge could not remember that any group interviews with the press had previously occurred. Tr. I, p. 168 (Alldredge testimony).

14. Policy Statement 1220.1A permits inmates to send

to newsmen letters which are not opened by prison officials §4(b)(1).

15. Policy Statement 1220.1A permits newsmen to write to inmates letters which are inspected by prison officials for contraband and read for content which would incite unlawful conduct. §4(b)(2).

16. Policy Statement 1220.1A encourages newsmen to visit federal correctional institutions for the purpose of preparing reports about institutional facilities, programs and activities. §4(b)(5). Newsmen may also visit schools or business establishments which employ offenders in community programs, if the permission of the school or the employer is obtained in advance. §4(b)(8).

17. Policy Statement 1220.1A permits media representatives to take photographs of programs and activities at federal correctional institutions. If inmates are to be photographed, their permission must be obtained. §4(b)(7).

18. The plaintiffs contend that the total prohibition of interviews with inmates contained in Policy Statement 1220.1A contravenes their First Amendment right to gather information about events of public concern and the First Amendment rights of the public to be fully informed about the conduct of institutions supported with public money. Because the no-interview policy touches upon First Amendment rights, plaintiffs further contend that any governmental interests reflected in that policy must be protected by means less restrictive than the present flat prohibition of all interviews.

19. The defendants have argued that no First Amendment rights have been infringed because Policy Statement 1220.1A provides adequate means by which the news media and the public can inform themselves about conditions in federal prisons. In the alternative, the defendants contend that any restriction of First Amendment rights caused by the no-interview policy is justified by considerations of prison security, discipline and administrative convenience.

## *II. The Need for Private, Confidential Interviews*

20. The Court finds that the news media and newsmen

have a legitimate interest in informing themselves and keeping the public informed about conditions in the institutions and facilities operated by the Federal Bureau of Prisons. Tr. I, p. 100 (Carlson testimony). Those institutions are generally closed to members of the public, although some persons—such as families and friends of inmates, clergymen, attorneys and Congressmen—are permitted to visit them on a regular basis. Nevertheless, despite the limited access to those institutions, they remain public institutions and their operations are a matter of public concern. Tr. II, p. 127 (Leland testimony); PX 14, p. 21 (Abel deposition); PX 63, p. 24 (Machacek deposition). The fact that federal prison facilities are not generally open to all members of the public only underscores the importance of the role that the news media can play in providing information about the conduct of those institutions. PX 65, pp. 57-60 (Mattick deposition).

21. The Court finds further that the plaintiffs had a legitimate news interest in seeking to develop additional information about the events that occurred at the federal prisons at Lewisburg and Danbury during and following the work stoppages at those two institutions. Specifically, the plaintiffs wished to examine how the work stoppages were resolved without bloodshed, the role played by inmate negotiating committees elected by the inmates in reaching a peaceful settlement of the disputes, and whether the inmate leaders had been punished despite promises of no reprisals. Tr. I, pp. 20, 57 (Bagdikian testimony).

22. The Court finds that the defendants have not imposed a news blackout on events and conditions at federal prisons, as the plaintiffs have alleged in their papers. See, e.g., Complaint, §11. The sources of information about federal prisons, which are recited in paragraphs 12-17, *supra*, and which are available to the news media under Policy Statement 1220.1A enable newsmen to obtain some information about events and conditions at federal prisons.

23. The Court also finds, however, that the flat prohibition in Policy Statement 1220.1A of private, individual interviews between newsmen and inmates willing to be

interviewed prevents the news media from developing accurate and effective accounts of conditions and events in federal prisons or grievances of inmates confined to those prisons. Tr. 11, pp. 14-44 (Fisher testimony); *id.*, at 122-23 (Leland testimony); PX 14, pp. 13-18 (Abel deposition); PX 63, pp. 18-21 (Machacek deposition).

24. The Court heard uncontradicted testimony from experienced newsmen and journalism educators that the sources of information available under Policy Statement 1220.1A—either separately or in combination—are inadequate to permit the news media to develop accurate and in-depth knowledge of prison conditions or events or prisoner grievances, as the plaintiffs attempted to do in this case.<sup>2</sup>

a. The essential defect in limiting contact between newsmen and particular inmates with grievances or complaints to an exchange of correspondence, as the Policy Statement does, is that the newsmen has no opportunity to confront those inmates and evaluate the credibility of the information they wish to convey. Tr. 11, p. 43 (Fisher testimony); *id.* at 131 (Leland testimony); PX 14, pp. 23, 32 (Abel deposition). The need for face-to-face confrontation can be of particular importance in the prison context because the inmate who complains by letter may be unknown to the news media and there would be no independent basis for evaluating his credibility and reliability. Tr. 11, p. 131 (Leland testimony).

b. Newsmen-inmate communication by correspondence has other serious defects. It can cause delays in developing current information about events or prison conditions. Tr. 1, p. 22 (Bagdikian testimony); PX 63, p. 21 (Machacek deposition). Moreover, an exchange of correspondence does not permit a newsmen to pursue a line of questioning in

<sup>2</sup> Except for plaintiff Bagdikian, the newsmen and educators who testified had not had extensive experience in covering or reporting on prison conditions. But there is no basis for assuming that the news-gathering techniques or needs of newsmen covering prisons will differ significantly from those of newsmen in other assignments. PX 14, pp. 16-17 (Abel deposition); PX 63, pp. 20-21 (Machacek deposition).



depth or to ask follow-up questions on the basis of a particular response. Tr. II, p. 43 (Fisher testimony); *id.* at 130 (Leland testimony); PX 63, pp. 21-22; see Tr. II, p. 14 (Liman testimony). There is also a well-founded suspicion on the part of newsmen that many inmates are not sufficiently literate to communicate effectively by means of the written word. Tr. II, p. 130 (Leland testimony); PX 14, pp. 17-18 (Abel deposition). To the extent that newsmen cannot obtain the views of inmates who are not fully literate, an important source of information is likely to be lost. PX 65, p. 61 (Mattick deposition). The loss would not be mitigated by the opportunity for some inmates to write letters on behalf of others. *Id.*<sup>4</sup>

c. The opportunity offered newsmen to tour federal prisons and to engage in casual conversations with inmates encountered during the tour is not an adequate substitute for private, individual, in-depth interviews. Those conversations are limited in terms of their duration, Tr. I, p. 141 (Aldredge testimony); *id.* at 175 (Norton testimony); *id.* at 189-190 (Carlson testimony), and content, Tr. I, p. 47 (Bagdikian testimony); *but cf. id.* at 154, 166 (Aldredge testimony); newsmen cannot identify in their stories the inmates with whom they had conversations, Policy Statement, ¶4(b)(6); Tr. I, p. 24 (Bagdikian testimony); and the conversations may be overheard by prison officials, Tr. I, pp. 53, 54-55 (Bagdikian testimony); *but cf. id.* at 154 (Aldredge testimony). In addition, because the newsmen cannot designate in advance the inmates with whom he will converse, the opportunity for casual conversations gives him no access to inmates who are known to have particularized complaints or other particularized information. Tr. II, p. 137 (Leland testimony); PX 63, p. 32 (Machacek deposition).

d. The willingness of federal prison officials to provide the news media with information about events and condi-

<sup>4</sup> The Court also heard testimony that, because mail coming into a federal prison from a newsmen is read for illegal content, inmates are likely to be reluctant to be wholly candid in their written exchanges with newsmen for fear of reprisals from prison officials. Tr. I, pp. 16-17, 22-23 (Bagdikian testimony).

tions at these institutions is no substitute for private, individual interviews with inmates. Particularly when a newsman is seeking information relating to inmate complaints about the actions of prison officials or employees, newsmen who testified stated that their experiences make them skeptical that these officials or employees will provide them with objective and balanced information. Tr. 11, p. 44 (Fisher testimony); *id.* at 128-129 (Leland testimony); PX 14, pp. 18-19, 30-31 (Abel deposition). That this skepticism is warranted is shown, for example, by the fact that public officials deliberately gave false information to the news media concerning how the hostages died during the Attica prison revolt in September 1971. PX 14, pp. 30-31 (Abel deposition); PX 63, pp. 5-14, 22-23 (Machacek deposition); PX 9, pp. 455-62 (Attica Report).

e. Plaintiff Bagdikian was given an opportunity at the federal prisons at Lewisburg and Danbury to interview several inmates selected at random from the prison population in a group and out of the hearing of prison officials or employees. Tr. 1, pp. 15-18 (Bagdikian testimony). The group interview conducted by Mr. Bagdikian at Lewisburg proved "very unproductive," Tr. 1, p. 50 (Bagdikian testimony), because the particular inmates he traveled to Lewisburg to interview were not part of the group and because the inmates who participated admitted they could not speak with candor out of fear that what they said would be reported to prison officials by other inmates and result in reprisals. Tr. 1, pp. 17-18 (Bagdikian testimony). The evidence before the Court also shows that group interviews in the prison context are unsatisfactory because, when interviewed in groups, inmates tend to make speeches for the benefit of other inmates rather than relate facts. Indeed, the New York State Special Commission on Attica found that inmates interviewed in a group were far more critical of prison authorities than when they were interviewed in private. Tr. 11, pp. 10-11 (Lisman testimony).

25. Based on the evidence recited in paragraph 24, *supra*, the Court finds that the sources of information available to the news media under the Policy Statement are inade-

quate for the development of accurate and effective news accounts of prison conditions and events and prisoner grievances.

26. The Court heard considerable, uncontradicted testimony from experienced newsmen, journalism educators and others concerning the importance of face-to-face private interviews as a news-gathering technique. That evidence showed the following:

a. The opportunity for face-to-face interviews with news sources is critical when the credibility and reliability of the source is unknown to the newsmen. Tr. II, p. 32 (Fisher testimony); *id.* at 115-17 (Leland testimony).

b. A private interview with an inmate having a particularized grievance permits the newsmen to "study the demeanor of the man, pursue questions at once, watch reactions, [and] confront him with things that seem to be internally inconsistent." Tr. I, p. 23 (Bagdikian testimony). None of these opportunities exists as a practical matter in the alternative sources of information available to newsmen under the current Policy Statement. See ¶24, *supra*.

c. In the prison context, newsmen need to interview, for purposes of corroboration, not only inmates known to have particularized grievances but also other inmates likely to have knowledge concerning the grievances. PX 63, p. 21 (Machacek deposition).

d. The opportunity for a face-to-face interview is as important to a newsmen gathering news as it is to an attorney developing his case, Tr. II, p. 14 (Lisman testimony), or a police detective investigating a crime. Tr. II, p. 130 (Leland testimony).

e. Face-to-face interviews with news sources play such a fundamental role in the news-gathering process that the development of interviewing techniques is a central feature of the curricula of the nation's most prestigious journalism schools. Tr. II, pp. 30-32 (Fisher testimony); PX 14, pp. 8-10 (Abel deposition).

f. The Court was cited a number of examples in which face-to-face interviews played the critical role in newsmen's decisions to pursue a news story or not to publish the story.

Tr. II, pp. 33-35 (Fisher testimony); *id.* at 116-20 (Leland testimony); PX 14, pp. 11-13 (Abel deposition); PX 63, 15-18 (Machacek deposition).

g. In one instance cited to the Court, the *Boston Globe's* coverage of a jail disturbance was based solely on the statements of jail officials and attorneys for the inmates because its newsmen were not allowed to interview the inmates. The result was "rather grim black headlines" about mistreatment of inmates that the editor who supervised the story did not believe constituted responsible journalism. Tr. II, pp. 120-22, 130 (Leland testimony). But the newspaper had no choice but to report the story on the basis of the inadequate information available to it. *Id.* at p. 122.

h. The plaintiffs placed in evidence a study published by *Journalism Quarterly* which analyzed the reasons for inaccuracies in news stories. PX 10. A major conclusion of that study is that "lack of contact between the newsmen and a news source increases the chance that serious subjective errors will be perceived as occurring or will occur." *Id.* at 756.

i. The report of the New York State Special Commission on Attica, PX 9, was based principally on some 3,000 interviews, 1,000 of them with inmates at that penal institution. Tr. II, p. 7 (Lisman testimony). It was the most comprehensive program of face-to-face interviews ever undertaken by persons other than prison authorities at a prison. *Id.* The General Counsel to the Commission recited to the Court an extensive catalog of significant information obtained through interviews with inmates that could not have been obtained in any other manner. *Id.* at 11-14. The Commission's experience was that confidential interviews with individual inmates were indispensable for the gathering of reliable information about conditions in prison, prisoner grievances and events in which inmates participate.

j. A sociologist with extensive experience in prison administration testified that he could obtain an understanding of a penal institution only if he had the opportunity to conduct face-to-face interviews with inmates and prison officials. PX 65, p. 48 (Mattick deposition).

27. Based on the evidence recited in paragraph 26, *supra*, the court finds that the accurate and effective reporting of news about prison conditions and events and prisoner grievances has a critical dependence upon the opportunity for face-to-face interviews with inmates.

28. The Court further finds that interviews with inmates, to be effective and productive, must occur in privacy, with only the newsmen and inmate present. The presence of prison officials or prison employees can have an inhibiting effect on the interview process because "a prison official has total control over the life of a prisoner and [the prisoner] knows it." Tr. I, p. 24 (Bagdikian testimony). Even the presence of other inmates is likely to prevent a candid exchange with the newsmen because the inmate being interviewed must be concerned with how the other inmates will react to the information he conveys. Tr. I, pp. 17-18 (Bagdikian testimony); Tr. II, pp. 10-11 (Laman testimony).

### III. *The Asserted Big Wheel Justification for Prohibiting Interviews*

#### A. *Definitions*

29. To clarify the issues raised by the asserted big wheel justification for prohibiting interviews between inmates and members of the press, the Court adopts the following definitions:

a. As used in these findings, the term "inmate leader" refers to an inmate at a correctional facility who commands a following among other inmates. Tr. II, p. 15 (Laman testimony).

b. As used in these findings, the term "big wheel" refers to an inmate leader who is perceived by prison administrators to be negative, hostile and anti-social. Tr. I, p. 206 (Carlson testimony).

c. As used in these findings, the term "trouble maker" refers to an inmate who violates prison rules or engages in other unlawful conduct while in prison.

30. Under these definitions, every big wheel is an inmate leader, for big wheels are a category of inmate leaders;

but not every inmate leader is a big wheel. Big wheels are those inmate leaders whom prison administrators perceive as negative, hostile and anti-social; inmate leaders whom prison administrators perceive in other ways are not big wheels. It follows from these definitions that every finding that applies without qualification to inmate leaders applies also to big wheels.

31. Under these definitions, big wheels are not defined to be trouble makers. Whether inmates whom prison administrators perceive as negative, hostile and anti-social are in fact trouble makers is a question not of definition, but of empirical fact for determination on the evidence.

#### *4. The Emergence of Inmate Leaders (Including Big Wheels)*

32. The Court finds that leaders (including big wheels) emerge in inmate society in much the same way they do in other social groups. Inmates become leaders within an inmate population through force of personality and by virtue of their native talents—e.g., articulateness and social skills generally, intellectual and athletic abilities, imagination. If an inmate lacks these qualities, he will not become an inmate leader; and interviews with the press cannot confer them. Many inmate leaders other than big wheels achieve leadership status by obtaining significant jobs within a prison. PX 65, pp. 13, 22 (Mattick deposition); Tr. 11, p. 16 (Laman testimony); Tr. 11, p. 92 (Kane testimony); PX 61, pp. 10-11, 39-41, 43 (discussion of "right guys" in *Theoretical Studies in Social Organization of the Prison*).

33. The Court further finds that several factors suggested as having some relation to the emergence of big wheels or other inmate leaders have in fact no such relation.

a. The fact that an inmate is well-known to the general public outside prison does not tend to make him a leader or big wheel within prison. PX 65, p. 14 (Mattick deposition); Tr. 11, p. 190 (Alldredge testimony). The evidence shows without contradiction that some well-known inmates have been inmate leaders. See Tr. 1, pp. 115, 117-18 (George

Jackson); Tr. 11, pp. 196-97 (Dr. Carl Coppolino). It also shows that other well-known inmates have not been inmate leaders. See sub-paragraphs (i) to (v) in support of this finding. The obvious conclusion is that whether or not a well-known inmate becomes a leader depends on other factors, principally those mentioned in paragraph 32.

(i) Nathan Leopold was very well-known to the general public while an inmate at Stateville Penitentiary at Joliet, Illinois, but was not an inmate leader or big wheel. PX 65, pp. 18-19 (Mattick deposition).

(ii) Richard Speck is an inmate well-known to the general public, but is not an inmate leader or big wheel. *Id.* p. 14.

(iii) Sirhan Sirhan is an inmate well-known to the general public, but is not an inmate leader or big wheel. *Id.*

(iv) Al Capone was an inmate well-known to the general public, but did not have significant power or influence over other inmates while in prison. *Id.*

(v) Albert DeSalvo (the Boston Strangler) is an inmate well-known to the general public, but is not an inmate leader or big wheel. Tr. 11, p. 110-A (Boone testimony).

b. The fact that an inmate is *not* well-known to the general public outside prison does not prevent him from becoming a leader or big wheel within prison. For example, none of the inmates who exercised leadership positions during the nonviolent inmate strike at Lewisburg Penitentiary was known to the general public before or after the strike. Tr. 11, p. 184 (Aldredge testimony).

c. The fact that an inmate engages in militant or violent rhetoric (whether in discussions with other inmates or with newsmen) cannot alone make him an inmate leader or big wheel. PX 65, pp. 23-24 (Mattick deposition); PX 9, pp. 181-82 (Attien Report).

34. The Court heard testimony concerning the effects of press interviews from correctional officials in the federal prison system, and prison systems of New York City, the District of Columbia, Cook County, Illinois, and the states of Illinois, Massachusetts, Iowa, Florida, and California. Of all the witnesses who testified from these jurisdictions, only one testified on the basis of actual experience with



press interviews that they have led to the emergence of a big wheel. Tr. 1, pp. 115, 117-18 (Prosecutor testimony). None of the three federal correctional officials who testified in this case discussed a single instance where in their personal experience or to their personal knowledge press interviews had led to the emergence or enhancement of a big wheel. None cited a single federal prisoner who there was reason to believe would become a big wheel or a trouble maker or a more troublesome inmate in any way if interviewed by the press. Although witnesses from Illinois, Iowa and Florida testified that press interviews may occasion a major disturbance, none discussed a single instance where the leadership position of an actual or potential big wheel was materially or lastingly affected by press interviews. Witnesses from New York City, the District of Columbia, Massachusetts and Cook County testified that press interviews produced no serious problems from a correctional point of view.

85. Accordingly, on the basis of the evidence recited in paragraph 84, *supra*, the Court finds that interviews between a member of the press and an inmate, even an assertive, politically militant inmate, cannot make the inmate an inmate leader or big wheel when he otherwise would not be one. PX 65, pp. 25-26 (Mattick deposition). Moreover, the Court finds that interviews between a member of the press and an inmate who already is a big wheel are not likely to enhance the status of the inmate significantly or for an extended period of time. Tr. 1, p. 74 (Malcolm testimony); Tr. 11, pp. 92-94 (Bonne testimony). Thus, in sum, the Court finds that interviews between a member of the press and an inmate are not likely to have any significant or enduring effect on the relationship between that inmate and other inmates.

86. The Court further finds that just as interviews between members of the press and inmates are not likely to have significant or enduring effects on the leadership status of particular inmates vis-a-vis other inmates, such interviews if conducted during normal times (when there is no emergency or other crisis at the prison) are not likely to

have significant or enduring effects on the prevailing power relationship between inmate leaders on the one hand and the prison administration on the other. PX 66, p. 22 (Mattick deposition).

37. Nor, the Court finds, are such interviews likely to have any influence on which inmates will assume leadership during a future disturbance or other future crisis at the prison. The men who assume leadership positions among the inmates during periods of crisis are men who already have leadership positions in inmate social groups or who have talents or personal qualities of the sort described in paragraph 32 which particularly fit them for leadership in such a situation. PX 9, pp. 197-98 (Attien Report); Tr. 11, p. 110-A (Hoone testimony).

### *C. Assessment of Inmate Leaders and Big Wheels in Light of Correctional Policies*

38. The Court finds that not all inmate leaders are big wheels, and that, indeed, the vast majority of relationships between prison administrators and inmate leaders, though not warm and friendly, are moderate, functional and cooperative. PX 66, p. 16 (Mattick deposition). Prison is not a place where every man's hand is raised against every other man every minute of the day. *Id.*, p. 17.

39. The Court finds that most inmate leaders are not oriented toward revolt, but on the contrary find it in their interest to aid in securing the custodial objectives of the prison staff, and in particular in maintaining good order in the prison. PX 61, pp. 33, 45-46 (*Theoretical Studies in Social Organisation of the Prison*).

40. On the basis of the evidence before it, the Court finds that big wheels do not provoke or otherwise cause large-scale prison violence or other major disturbances. PX 9, pp. 104-15 (Attien Report); PX 66, Plah. 1 (*The Prosodic Sources of Prison Violence*); Tr. 11, p. 96 (Hoone testimony).

41. On the basis of the evidence before it, the Court finds that big wheels are not principally responsible for the introduction of militancy into inmate populations. In view of the fact that inmates are continuously entering

prisons from society at large and that even while in prison they have extensive exposure to events in the outside world, see, e.g., Tr. I, pp. 177-78 (Norton testimony); P'X 65, pp. 39-40 (Mattick deposition), it appears to the Court that big wheels play at most a marginal role in stimulating inmate militancy.

42. The Court finds that whereas inmate militancy can cause problems for prison administrators, such as an increase in tensions, or in nonviolent agitation for change, inmate militancy also can positively advance universal correctional goals. Militancy can lead inmates to examine realistically and critically their condition in prison and in life generally, and can contribute to giving them a stronger self-concept, a sense of dignity, and the desire and ability to make realistic decisions about their own lives. To the extent that big wheels contribute to inmate militancy, they may be advancing rather than hindering correctional goals. P'X 65, pp. 27-29 (Mattick deposition).

#### *D. Evaluation of Asserted Big Wheel Justification for Prohibiting Interviews*

43. Based on the evidence before it, the Court finds that the asserted big wheel justification for prohibiting all press interviews with all inmates under the jurisdiction of the Federal Bureau of Prisons has no tangible footing in a significantly wide spectrum of experience in prison administration.

### *IV. Other Asserted Justifications*

#### *A. Prison Disturbances*

44. The Court heard considerable testimony from both a sociologist specializing in prison social structure and prison officials concerning the effect press interviews would have on prison tensions and disorders. That evidence tended to show the following:

a. Inmates and staff establish very complex and intricate kinds of mutually dependent social relations. Disorders develop when this internal social structure is disturbed.

PX 65, pp. 81-88 (Mattlek deposition); PX 65, Exhibit 1, (article, *The Prosaic Sources of Prison Violence*, attached to Mattlek deposition).

b. Press interviews are not likely to have any effect on the internal social structure within prisons. PX 65, pp. 81-88, 45. (Mattlek Deposition)

c. Press interviews with inmates have created no prison disturbances in New York City, Washington, D.C. or Massachusetts, although a substantial number have been held in these jurisdictions. Tr. I, p. 72 (Malcolm testimony); Tr. I, p. 98 (Anderson testimony); Tr. II, p. 83 (Boone testimony).

d. In some instances press interviews with inmates have helped to relieve tensions. Tr. I, p. 73 (Malcolm testimony); Tr. II, p. 83 (Boone testimony).

45. The Court heard other witnesses testify that there was a connection between press reports and prison disorders. Their testimony tended to establish the following:

a. The U.S. Penitentiary at Terre Haute and the Florida State Prison had disturbances both before and after the granting of interviews which resulted in press reports. Tr. II, p. 167 (Alldredge testimony); Tr. II, p. 214 (Wainwright testimony). A warden from Iowa testified that tensions increased as a result of press interviews, but did not indicate that there were any disturbances. Tr. II, p. 235 (Brewer testimony).

b. No causal connection has been shown between interviews and subsequent disturbances. Warden Alldredge, Commissioner Wainwright, and Warden Brewer all testified that in their opinion, tensions increased as a result of press reports. Tr. II, p. 165 (Alldredge testimony); Tr. II, p. 207 (Wainwright testimony); Tr. II, p. 235 (Brewer testimony). However, they offered no concrete evidence to support their views. Therefore, in the absence of contrary evidence the Court must assume that these tensions developed in the manner described in paragraph 44 *supra*.

c. Inmates quickly learn of all activities and events within an institution. Tr. I, p. 157 (Alldredge testimony). Therefore, it is unreasonable to assume that disturbances result

from press reports concerning affairs about which inmates already have prior knowledge.

d. Alldredge, Wainwright, Brewer and Bensinger all stressed a connection between published reports and inmate disturbances, not a causal relationship between interviews and disturbances. Tr. II, p. 165 (Alldredge testimony); Tr. II, p. 207 (Wainwright testimony); Tr. II, p. 235 (Brewer testimony); PX 64, p. 35 (Bensinger deposition). Therefore, presumably the same effect would occur if press reports were based on information received by correspondence rather than by press interviews.

e. The press reports concerning the U.S. Penitentiary at Terre Haute which allegedly led to inmate disturbances were based on interviews by a congressional aide, not by a member of the press. The Court cannot assume, in the absence of evidence, that the same consequences would follow from interviews between inmates and members of the press. Moreover, the policy permitting interviews by congressional aides is not a discretionary policy, and thus there is no opportunity to prohibit such interviews when disciplinary problems or disturbances are likely to result. Tr. II, p. 146, 158, 162 (Alldredge testimony).

f. The press reports in Florida and Iowa were based on interviews which the wardens would not have granted, had they not been overruled by superiors, because they believed that disturbances were likely to result in those instances. Tr. II, pp. 197-98 (Wainwright testimony); Tr. II, pp. 231-32 (Brewer testimony).

g. The interviews which allegedly created disturbances at the U.S. Penitentiary at Terre Haute and the Florida State Prison were interviews in institutions which normally did not permit press interviews. Tr. II, p. 195 (Wainwright testimony); Tr. II, pp. 159-60 (Alldredge testimony). Therefore, the Court cannot determine from these experiences the probable consequences of a policy which generally permitted press interviews.

46. Based on the evidence recited in paragraphs 44 and 45, *supra*, the Court finds that interviews between inmates and the press are not likely to be a significant factor in the

development of disturbances in federal penal institutions. To the extent that press interviews increase the level of discussion and tension within an institution, they are no different from numerous other events, both within and without the institution, that have a similar impact. PX 65, pp. 38-40 (Mattick deposition); Tr. 1, p. 177 (Norton testimony).

### *B. Other Security Problems*

47. The Court finds that press interviews with inmates are not likely to create any additional prison security problems. Tr. 11, p. 88 (Boone testimony); PX 64, pp. 47-49 (Bensinger deposition).

a. Security procedures used by prison administrators to prevent the introduction of contraband by friends, relatives, attorneys, and other visitors to prisoners are readily applicable to newsmen entering prisons to interview inmates, without any loss of effectiveness. Tr. 11, p. 88 (Boone testimony); PX 64, pp. 47-48 (Bensinger deposition).

b. Members of the press are no more likely to introduce contraband than are lawyers, friends, relatives, or other visitors. PX 64, p. 48 (Bensinger deposition).

c. Members of the press are no more likely to participate in escape plans, to solicit offenses, or to make other unlawful or improper communications with inmates than are lawyers, friends, relatives, or other visitors. PX 64, p. 49 (Bensinger deposition).

### *C. Administrative Burdens*

48. The Court finds that press interviews with inmates will create no undue administrative burdens in view of the fact that prison officials have the power to set reasonable restrictions as to time and place, as they do for all visits to penal institutions. Tr. 11, p. 88 (Boone testimony); PX 64, p. 51 (Bensinger deposition).

a. The visiting facilities at penal institutions are frequently not used to their full capacity, and thus are availa-

ble for press interviews with inmates. Tr. II, pp. 181-82 (Aldredge testimony). Other facilities—e.g. conference rooms used for attorneys visits—are also likely to be available at many institutions. PX 64, p. 24 (Bensinger deposition).

b. Those jurisdictions which generally permit press interviews with inmates have had a relatively small number of requests for such interviews. Tr. II, p. 239 (Brewer testimony); Tr. I, p. 75 (Malcolm testimony); Tr. I, p. 90 (Anderson testimony); PX 64, p. 52 (Bensinger deposition). In these same jurisdictions, there has been considerable public interest in the prison system. Tr. I, p. 75 (Malcolm testimony); Tr. II, pp. 77-78 (Boone testimony).

c. Most large penal institutions facilitate thousands of interviews per year between inmates and their friends, relatives, and counsel. Tr. II, pp. 178-79 (Aldredge testimony); Tr. I, p. 67 (Malcolm deposition); PX 64, p. 53 (Bensinger testimony). The number of press interviews likely to occur, and the resulting administrative burden, are insignificant in relation to the total number of interviews granted each year. PX 64, p. 53 (Bensinger deposition).

d. Press interviews with inmates do not create significantly greater administrative burdens than other visits from friends, relatives, and counsel. Tr. II, p. 88 (Boone testimony); but cf. PX 64, pp. 49-51 (Bensinger deposition).

## V. *Benefits of Press Interviews to Correctional Systems*

49. The Court finds that opportunities for inmates to speak to newsmen tend to reduce tensions within the inmate population of a prison. Tr. I, 73 (Malcolm testimony); Tr. II, p. 83 (Boone testimony).

50. The Court finds that a policy of freely permitting interviews between members of the press and inmates is likely to increase press and public interest in corrections, and may lead to public pressure for improvements in correctional facilities, programs, and administration. Tr. II, pp. 78-79, 80, 84-86 (Boone testimony); PX 65, pp. 45, 26 (Mattick deposition); Tr. I, pp. 72, 73 (Malcolm testimony).



51. The Court finds that there is no better way to combat the destructive influences of the inmate social system, prepare an individual for freedom and increase public awareness than to strengthen inmate ties with the outside world. PX 29(a), p. C67 (Final Report of the Ohio Citizens' Task Force on Corrections); PX 9, pp. xvi-xvii (Attica Report Recommendations). This general principle applies to ties between inmates and the press.

#### VI. Policies in American Jurisdictions

52. Evidence was received showing the current policy with respect to confidential in-depth interviews between members of the press and inmates of correctional institutions in 24 American jurisdictions. The Court finds that of these, 11 generally permit such interviews. See Ex. 1 to PX 64 (Bensinger deposition) (Illinois); PX 22-A (Maine); PX 23-A (Maryland); PX 25-A (Nebraska); PX 28-A (North Carolina); PX 29-A (Ohio); PX 35-A, 35-C (Vermont); DX 7 (Iowa); PX 1, 2, 3 (New York City); PX 5, 6 (District of Columbia); Tr. II, 58-77 (Boone testimony) (Massachusetts). Seven American jurisdictions have policies that neither generally permit nor generally deny such interviews, but vest in correctional administrators discretion to permit or deny them in individual cases. See PX 18-A (Alaska); PX 20-A (Georgia); PX 24-A (Montana); PX 26-A (New Jersey); PX 30-A (Oregon); PX 31-A (Pennsylvania); PX 32-A (South Carolina). Five American jurisdictions generally prohibit such interviews. See PX 19-A (Connecticut); PX 21-A (Kentucky); PX 33 (Virginia); PX 34-A (Wisconsin); Tr. I, p. 114 (California). New Mexico has a unique policy, which does not fit into any of these categories. See PX 27-A, 27-B (New Mexico).

53. The Court finds that there is no substantial reason to believe that the problems involved in administering the federal prisons are more severe than those involved in administering prisons in the 11 jurisdictions that generally permit press interviews. Tr. II, pp. 58, 110-B (Boone testimony); Tr. I, pp. 62, 88 (Malcolm testimony); Tr. I,

pp. 104-07 (Colloquy between the Court and Mr. Hannon); PX 65, pp. 41-42 (Mattick deposition). Contra, Tr. II, pp. 209-10, (Wainwright testimony); PX 64, pp. 65-67 (Bessinger deposition).

a. Federal prisons have a higher percentage of white collar criminals and inmates committed for non-violent crimes than do state or local prisons. PX 65, pp. 41-42 (Mattick deposition).

b. From a correctional point of view, inmates held for trial are far more difficult to manage than are sentenced offenders. Tr. I, p. 98 (Malcolm testimony).

54. The Court finds that defendants have not shown that from a correctional point of view the Federal Bureau of Prisons has any substantial interest in having an absolutely uniform policy with respect to press interviews with inmates applicable at all institutions and to all inmates under its jurisdiction. See Tr. II, pp. 253-61 (Carlson testimony).

a. The policy of the Federal Bureau of Prisons is not to make all its institutions uniform, to have them all uniformly administered, or to treat all inmates as if they had the same correctional needs. Quite the contrary, the policy of the Federal Bureau of Prisons is to establish and maintain various types of institutions, having different correctional policies and serving different correctional needs, so that different inmates are subjected to different institutional experiences in federal correctional institutions. Tr. II, p. 260 (Carlson testimony); DX 11 (Federal Bureau of Prisons Biennial Report, 1970-71).

b. Even among institutions where uniformity may be sought as a matter of policy, in a large number of respects it is not, and cannot be, achieved. Every prison reflects the background, personality, style and training of its chief administrator; the personal qualities of its staff; the region in which it is located; and the daily life of its inmates is affected by its particular physical plant and other resources. As these differ from one institution to another, the inmates at those institutions will inevitably experience significant differences in their rights, privileges and opportunities. In view of these differences, any differences in the adminis-

tion of a policy vesting some discretion in prison administrators over the holding of press interviews are of trivial or very minor significance. PX 65, pp. 42-45 (Mattick deposition).

## VII. *Feasibility of a Press Interview Policy Vesting Significant Discretion in Prison Officials*

55. The Court finds that state and federal prison officials are able in most cases, and with no more than ordinary human error, to identify actual and potential big wheels and trouble-makers within their institutions.

a. Within the first few weeks of commitment to federal prison, all inmates within the jurisdiction of the Federal Bureau of Prisons receive a thorough evaluation, including intensive diagnostic studies. DX 11, p. 7 (Federal Bureau of Prisons Biennial Report 1970-71). The results of this evaluation are available to prison administrators and are the basis for many significant decisions made with respect to the handling of inmates.

b. In general, and with no more than ordinary human error, prison administrators and their staffs know who are the actual and potential trouble-makers within their institutions at any given time. See Tr. 11, p. 189 (Aldredge testimony); cf. Tr. 11, pp. 193, 196-97 (Wainwright testimony).

56. Information similar to that available to federal prison officials is the basis for the operation of Illinois' policy, which generally favors press interviews with individual inmates, but vests significant discretion in prison administrators. This policy has proved to be feasible in Illinois, and has worked satisfactorily. PX 64, pp. 28-31 (Bensinger deposition).

57. The Association of State Correctional Administrators has promulgated a guideline on relations between news media and prisons which provides for discretion in prison administrators to grant or deny interviews on an individual basis. Ex. 2 to PX 64 (Bensinger deposition). In promulgating that guideline, the ASCA took the view

that such a policy would work effectively. PX 64, p. 43 (Bensinger deposition).

58. The National Council on Crime and Delinquency has promulgated a Model Act for the Protection of Rights of Prisoners, § 7 of which provides, *inter alia*, that "[a]ny . . . citizen may make application to visit an institution and talk in private with prisoners if the applicant establishes a legitimate reason for such visit and if the visit is not inconsistent with the public welfare and the safety and security of the institution. The director may reject any such application if the visit or any aspect thereof would be disruptive to the program of the institution." Section 7 further provides:

"If the application for a visit is denied, the person may apply to [court of general jurisdiction] for an order directing the head of the institution to permit the visit. Such order shall be granted after notice and hearing if it is found that (a) the person is a representative of a public concern regarding the conditions of the prison, (b) he is not a mere curiosity seeker, and (c) it is not established by the head of the institution that the visit, or any aspect of it, would disrupt the program of the institution." PX 15, pp. 18-19 (NCCD Model Act).

This provision plainly contemplates that newsmen shall have opportunities to have private interviews with inmates, subject to discretion in prison administrators to prohibit such interviews where necessary in the interest of protecting the functioning of the institution. The NCCD and the committee which drafted the model act plainly have concluded that the exercise of such discretion by prison administrators is feasible and consistent with correctional goals.

59. The fact that 19 American jurisdictions have policies which permit interviews while giving greater or lesser scope for the exercise of discretion by prison administrators, see paragraph 52, *supra*, shows that a very broad spectrum of opinion of professional correctional admin-

istrators in all parts of the United States believe that a policy granting some degree of discretion to correctional administrators with respect to the permitting or denying of interviews between newsmen and inmates is feasible and consistent with correctional goals.

60. On the basis of the evidence before it, and paragraphs 55 to 59, *supra*, the Court further finds that a policy vesting significant discretion in prison officials with respect to the holding of interviews between inmates and members of the press is feasible and consistent with correctional goals.

### CONCLUSIONS OF LAW

1. Plaintiffs are members of the press within the meaning of the First Amendment to the Constitution of the United States.

2. The Free Press Clause of the First Amendment protects the right of the public to be informed by the press about matters of public interest, including the administration of prisons, which are public institutions.

3. The right of the press to gather information is an indispensable element of the public's First Amendment right to be informed about matters of public interest, and accordingly is within the protection of the First Amendment.

4. Plaintiffs' interest in conducting confidential interviews with individual inmates of federal correctional institutions who are willing to be interviewed is an interest in gathering information on a matter of public interest, and accordingly is within the protection of the First Amendment. That interest, protected by the First Amendment, is seriously impaired by the Bureau of Prisons' prohibition of confidential interviews between inmates and members of the press.

5. A continuing flat prohibition against press interviews of any prisoner, at any time, under any circumstances, in any institution is on its face arbitrary.

6. The burden of justifying such a prohibition rests upon the defendants.

7. Under the First Amendment, such a prohibition of

activity within the Amendment's protection is invalid unless the prohibition is no broader than necessary to protect compelling governmental interests. Under this constitutional test, the Court is called upon, not to substitute its own judgment for that of the defendants, but to determine, after balancing the considerations pro and con the challenged prohibition, whether the justification offered is obviously deficient.

8. Defendants have failed to meet their burden of proof. The evidence they have offered in support of justifications for prohibiting interviews between inmates of federal correctional facilities and newsmen is insufficient to establish that the prohibition is no broader than necessary to protect compelling governmental interests.

9. Since there is no compelling governmental interest for prohibiting press interviews with inmates willing to be interviewed, the fact that the challenged policy permits the press to obtain information by other means is constitutionally irrelevant.

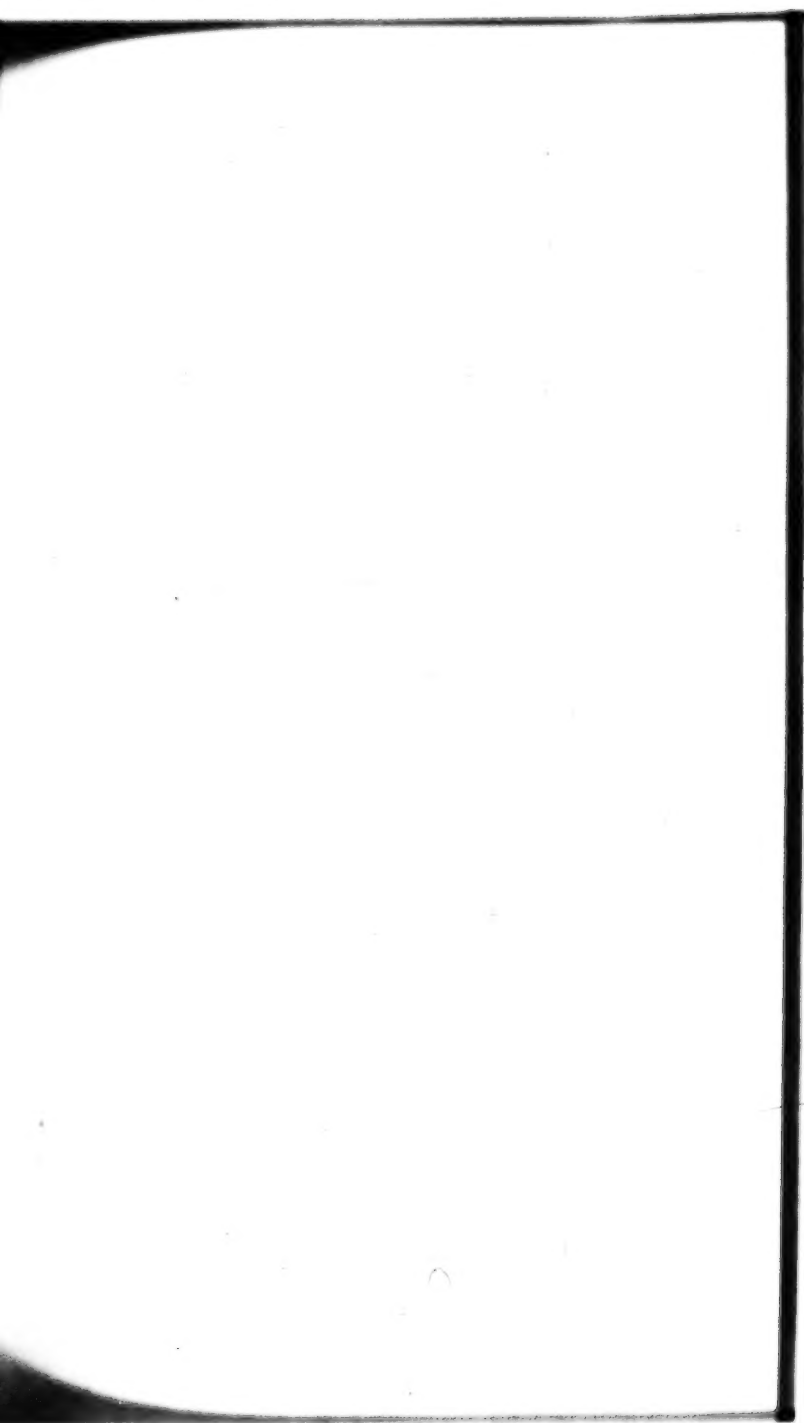
10. Defendants' Policy Statement § 1220.1A is overbroad in violation of the First Amendment insofar as it prohibits interviews between members of the press and inmates of federal correctional institutions who are willing to be interviewed by members of the press, except when such interviews are likely to directly and immediately cause serious administrative or disciplinary problems.

Respectfully submitted,  
WILLIAMS, CONNELLEY & CALAFANO

By

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December 11, 1972







IN THE  
Supreme Court of the United States  
October Term, 1973

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No. 73-1255

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WILLIAM B. BAKER, Attorney General of the United  
States, and NORMAN A. GANSON, Director, United  
States Bureau of Prisons, Petitioners,

v.

THE WASHINGTON POST COMPANY and  
RAY H. BARNHART, Respondents.

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BRIEF IN RESPONSE TO  
PETITION FOR CERTIORARI

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1973

No. 73-1205

WILLIAM B. SANDE, Attorney General of the United  
States, and NORMAN A. CARLSON, Director, United  
States Bureau of Prisons, *Petitioners,*

v.

THE WASHINGTON POST COMPANY and  
BEN H. BAGDIKIAN, *Respondents.*

**BRIEF IN RESPONSE TO  
PETITION FOR CERTIORARI.**

The Washington Post Company and Ben H. Bagdikian file this response to the petition for certiorari before final judgment filed by the Solicitor General on behalf of the Attorney General of the United States and the Director of the United States Bureau of Prisons.

### **OPINIONS BELOW**

The initial opinion of the district court is reported at 357 F. Supp. 770 (D.D.C. 1972). The order of the court of appeals is reported at 477 F.2d 1108 (D.C. Cir. 1972). The opinion of the district court on remand is reported at 357 F. Supp. 770 (D.D.C. 1972).

### **JURISDICTION**

The jurisdictional requisites are adequately set forth in the petition.

### **REGULATION INVOLVED**

The regulation is set forth at pages 2, 40-45 of the petition.

### **QUESTION PRESENTED**

Whether the regulation of the United States Bureau of Prisons prohibiting all individual face-to-face interviews between members of the press and particular federal prison inmates in all correctional institutions, at all times and under all circumstances, violates the First Amendment.

### **STATEMENT**

For present purposes, the case is adequately stated at pages 2-6 of the petition.

### **ARGUMENT**

Respondents agree with petitioners that this case presents issues closely related to those involved in *Procunier v. Hillery*, No. 73-754, probable jurisdiction noted, January 7, 1974, and *Pell v. Procunier*, No. 73-918, probable jurisdiction noted, January 21, 1974. The federal prohibition of press interviews with prison

inmates, United States Bureau of Prisons Policy Statement No. 1220.1A, § (6), is essentially indistinguishable from California's total prohibition, California Department of Corrections Manual § 415.017, at issue in *Procunier and Pelt*.

Respondents further agree with petitioners in believing that in ruling upon these issues this Court would be aided by having before it the record made in the instant case. That record includes the testimony of numerous expert witnesses on the respective press and correctional interests at stake. It also includes a collection of documents setting forth the policies of numerous state and local jurisdictions on interviews between newsmen and prisoners.

On the press interest, the court heard live testimony from Ben H. Bagdikian, formerly Assistant Managing Editor of the Washington Post, who has extensive experience in reporting on prisons; Timothy Leland, Assistant Managing Editor of the Boston Globe and a Pulitzer Prize Winner; Roy M. Fisher, Dean of the University of Missouri School of Journalism; and Arthur L. Liman, General Counsel to the New York State Special Commission on Attien, who conducted the largest project of interviewing prison inmates ever undertaken by persons other than correctional officials. The court also received deposition testimony from Elie Abel, Dean of the Graduate School of Journalism at Columbia University, and John Machneck, a reporter for the Rochester Times-Union who won a Pulitzer Prize for his coverage of the Attien uprising.

On the correctional interests, the court heard live testimony from Normal Carlson, Director of the United States Bureau of Prisons; Noah L. Aldredge, Warden

of the federal penitentiary at Lewisburg, Pennsylvania, and subsequently warden at Terre Haute, Ind.; John J. Norton, Warden at the federal correctional facility at Danbury, Connecticut; Raymond K. Procutner, Commissioner of Corrections for California (appellant in *Procutner v. Hillery* and appellee in *Pell v. Procutner*); Benjamin Malcolm, Commissioner of Corrections for New York City; John O. Boone, Commissioner of Corrections for Massachusetts, and a former federal prison official; Louis L. Wainwright, Director of Corrections for Florida; Lou V. Brewer, Warden of the Iowa State Penitentiary; and Leroy Anderson, Executive Assistant to the Director of the Department of Corrections for the District of Columbia. In addition, the court received deposition testimony from Peter B. Bensinger, Director of Corrections for Illinois and President of the Association of State Correctional Administrators; and from Hans W. Mattick, a sociologist of prisons and former operating head of the Cook County (Illinois) Jail.

Although respondents believe that this Court would be aided by having the benefit of an opinion from the District of Columbia Circuit in the instant case, we have no reason to believe that the court's opinion will be issued prior to decision by this Court in *Procutner v. Hillery* and *Pell v. Procutner*. For this reason, and in view of the comprehensiveness of the record made below, respondents do not oppose the granting of certiorari. Respondents do, however, submit that the judgment below is fully correct for the reasons stated in the opinions of the district court.

Petitioners have stated that if certiorari is granted they will file their brief in time to permit this case to

be argued this Term together with the *Procunier* cases. Respondents offer the same commitment, but ask that the briefing schedule allow us at least two weeks between service of petitioners' brief on the merits and the filing of our brief. A large part of that two weeks time will be consumed by printing.

### CONCLUSION

For the foregoing reasons, respondents do not oppose the granting of certiorari.

Respectfully submitted,

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Attorneys for Respondents,

The Washington Post

Company and Ben H.

Hagdikian

February 21, 1974



# **In the Supreme Court of the United States**

**OCTOBER TERM, 1973**

**No. 73-1205**

**WILLIAM B. KASHE, ATTORNEY GENERAL OF THE UNITED STATES, AND NORMAN A. CARLSON, DIRECTOR, UNITED STATES BUREAU OF PRISONS, PETITIONERS**

**v.**

**THE WASHINGTON POST CO. AND BEN H. BAUDERIAN**

**SUPPLEMENTAL PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

On February 15, 1974, the Solicitor General, on behalf of the Attorney General of the United States and the Director of the United States Bureau of Prisons, filed a petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit. The jurisdiction of the Court to review the case, which was then still pending in the court of appeals, was invoked pursuant to 28 U.S.C. 2101(c). On February 21, 1974, the respondents filed a response which did not object to the grant of certiorari.

On February 21, 1974, the court of appeals affirmed the district court judgment in this case, with modifications (Appendix A, *infra*, pp. 3-24).

We believe that certiorari to review this case continues to be appropriate for the reasons set out in our original petition. As the Court of Appeals noted in its opinion, "[B]oth the District Court and ourselves have been at special pains to assure the development of an evidentiary record adequately illuminative of the important issue to be resolved" (App. P., *infra*, p. 4). The jurisdiction of this Court on certiorari would now be based upon 28 U.S.C. 1254(1).

Counsel for respondents has advised us that respondents continue their position of not objecting to the grant of certiorari.

If certiorari is granted, petitioners will file their brief on the merits in sufficient time for the Court to hear the case this Term along with *Procunier v. Hiltegg*, No. 73-754, probable jurisdiction noted, January 7, 1974, and *Pelt v. Procunier*, No. 73-918, probable jurisdiction noted January 21, 1974.

#### CONCLUSION

For the foregoing reasons, it is respectfully submitted the petition for a writ of certiorari should be granted.

ROBERT H. BOWEN,  
Solicitor General.

IRVING JAFFE,  
Acting Assistant Attorney General.

LEONARD MCHARTMAN,  
NEIL H. KOSLOWE,  
Attorneys.

FEBRUARY 1974.

**United States Court of Appeals**  
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**No. 74-1808**

**THE WASHINGTON POST COMPANY, ET AL.**

**v.**

**RICHARD G. KLEINDIENST, Acting Attorney General**  
**of the United States, ET AL., APPELLANTS**

**On Proceeding Subsequent to Remand**

**Decided February 21, 1974**

*Leonard Schattman, Attorney, Department of Justice, with whom Harold H. Titus, Jr., United States Attorney, and Morton Hollander, Attorney, Department of Justice, were on the brief, for appellants. John A. Terry, Michael A. Katz, and Robert D. Sealman, Assistant United States Attorneys, also entered appearances for appellants.*

*Joseph A. Califano, Jr., with whom Charles H. Wilson, Jr., and Richard M. Cooper were on the brief, for appellees.*

*Melvin L. Wolf and Hope Eastman filed a brief on behalf of Tom Wicker, et al., as amici curiae urging affirmance. Michele Hermann also entered an appearance for Tom Wicker, et al., as amici curiae.*

4

Before MCGOWAN, LEVENTHAL, and ROBINSON, Circuit Judges.

Opinion for the Court filed by Circuit Judge McGowan.

MCGOWAN, Circuit Judge: This appeal by the Government from a declaration and order of the District Court presents the question of the extent to which press communication with federal prisoners can be restricted without falling afoul of the First Amendment. It arises by reason of the issuance and implementation by the Federal Bureau of Prisons of its Policy Statement 1220.1A, which categorically forbids personal interviews by newsmen of all prisoners in all of the correctional institutions administered by the Bureau. Because of the great respect which the federal judiciary entertains for the Bureau by reason of its long and continuous history of distinguished and enlightened leadership, both the District Court and ourselves have been at special pains to assure the development of an evidentiary record adequately illuminative of the important issue to be resolved. By reference to that record, and the supportable findings and conclusions carefully distilled therefrom by the District Court, we affirm the action taken by it. That action is essentially to require that the Bureau reformulate its policy in less absolute terms, thereby reducing the unacceptable degree of tension which now exists between the policy and the First Amendment, and striking a justifiable balance between the administrative needs of the Bureau and the constitutional guarantee of the public's right to know about the public business through the functioning of a free press.

I

Appellees are a major newspaper and one of its reporters. In March of 1972 the reporter requested of the Director of the Bureau permission to conduct interviews in the federal prisons at Lewisburg, Pennsylvania and

Danbury, Connecticut. The inmates he sought to interview were members of inmate negotiating committees that had been formed during work stoppages during the prior month, as well as certain other inmates who had written him to complain of their treatment. Relying on Policy Statement 1220.1A, the Director rejected the requests.<sup>1</sup>

Suit was then filed in the District Court challenging these denials and the Policy Statement on which they were based. The District Court declared that the Bureau's Policy Statement, insofar as it flatly prohibited all press interviews, violated the First Amendment; and it ordered the Bureau to stop enforcing that policy, and, pending its modification, to proscribe only those requested press interviews that are likely immediately and directly to cause serious administrative or disciplinary problems. *Washington Post Co. v. Kleindienst*, 357 F. Supp. 770, 779 (D.D.C. 1972).<sup>2</sup>

<sup>1</sup> Apparently order had been restored in the prisons in question. In rejecting the requests, the Director made no reference to continuing tension or unrest at those institutions.

<sup>2</sup> The ordering provisions of the District Court's decision were cast in terms of a command that appellants should issue within 90 days new rules governing press interviews. The rules were required to satisfy the conditions that (1) a general policy be established to permit, subject to reasonable restrictions as to time and place, confidential and uncensored press interviews with any consenting inmate, (2) exceptions to the foregoing general policy are permitted only "where it can be established as a matter of probability on the basis of actual experience that serious administrative or disciplinary problems are, in the judgment of the prison administrators directly concerned, likely to be created by the interview because of either the demonstrated behavior of the inmate concerned or special conditions existing at the inmate's institution at the particular time the interview is requested," and (3) pending the adoption of the new regulations, press requests for interviews are to be considered on an individual

The Supreme Court stayed the District Court's order pending resolution of the appeal to this court. 408 U.S. 912 (1972). After oral argument and while the appeal was under submission, we remanded the case to the District Court, suggesting the desirability of expanding the record by further evidentiary hearings in order that findings of fact could be made on specified issues, and the conclusions of law reexamined in light of the more developed factual record and the intervening Supreme Court discussion of press freedoms in *Hronsbury v. Hayes*, 408 U.S. 605 (1972), which had been pressed upon us by the Government. 477 F.2d 1108 (D.C. Cir. 1972). On remand, the District Court held further evidentiary hearings, enlarged its findings of fact, and examined *Hronsbury* and other recent decisions urged upon it by the parties. The District Court reaffirmed its initial decision, *Washington Post II*, 357 F. Supp. 770 (D. D.C. 1972), and the case returned to this court where it was supplementally briefed and orally argued a second time.

The Bureau's policy governing press interviews differs significantly from that controlling the visitation rights of other persons. In general, inmates' families, their attorneys, and religious counsel are accorded liberal visitation privileges. Even friends of inmates are allowed to visit, although their privileges appear to be somewhat more limited. The testimony suggests that the federal institutions follow a rather liberal policy of granting visitation privileges whenever possible."

limits and granted "except where it can be established that serious administrative or disciplinary problems would be created by the interview sought."

"The regulations that govern federal visitation policy for these persons are reprinted in the appendix to the Government's brief. Brief for the appellants on remand at 3a-13a. See also testimony of Mr. Noah H. Allredge, Warden of the

Policy Statement 1220.1A, promulgated on February 11, 1972, establishes the Bureau policy controlling all means of news gathering within the federal institutions. Under that policy, inmates are permitted to correspond freely with members of the news media. The correspondence is funneled through sealed prisoners' mailboxes provided for the purpose of assuring that no censorship occurs. Likewise, representatives of the news media are permitted to initiate or follow up correspondence with inmates of their choosing, and incoming letters are only inspected to assure that they do not contain contraband or materials that would incite illegal conduct.<sup>1</sup> Additionally, the Bureau's proclaimed policy is to encourage visitation by representatives of the news media, by advance appointment, for the purpose of preparing reports concerning institutional facilities, programs, and activities.<sup>2</sup>

The Bureau's policy governing private press interviews—the focus of this litigation—is set forth in the first two sentences of paragraph 4(b)(6) of the Policy Statement:

Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, a conversation may be permitted with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities.

United States Penitentiary at Lewisburg, Pennsylvania, Supp. Appendix to Original Record, Vol. 1, at 216-221.

<sup>1</sup> Establishment of the inmates' protected mailing system constituted a major change from the Bureau's prior policy.

<sup>2</sup> Of course, these inspection tours may be suspended in case of institutional emergency. See Policy Statement 1220.1A, par. 4(b)(6). The Policy Statement in its entirety is appended to the District Court's opinion in *Washington Post I*.



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The Bureau's distinction between an "interview" and a "conversation" was explored in the evidentiary hearings and reflected in the District Court's findings of fact. Essentially, the Bureau considers a "conversation" to be a spontaneous discussion with inmates whom a newsmen might randomly encounter during a supervised inspection tour of the institution. Such conversations are limited in time to approximately five to ten minutes, and are restricted by the terms of the Policy Statement to the discussion of "institutional facilities, programs and activities." Additionally, reporters who rely on information received in a "conversation" are requested not to name the inmates with whom they spoke. By contrast, the Bureau considers an "interview" to be a private, scheduled, face-to-face discussion with a designated inmate that lasts a sufficient time to permit extensive discourse."

The Policy Statement's prohibition against interviews is total. They are to be denied regardless of the characteristics and record of the inmate; his desire to be interviewed; and the conditions prevailing at the institution at the time the interview is sought. Moreover, the interview ban applies with equal force to all federal institutions, minimum as well as maximum security, and even precludes interviews with offenders who are employed in business establishments or attending schools pursuant to community release programs.'

"See Plaintiffs' Proposed Findings of Fact and Conclusions of Law, Findings 10-18, Supp. Appendix, Vol. I, at 14-17. These proposed findings were adopted by the District Court, *Washington Post II*, *supra*, at 784. In this opinion, we will use the terms "interview" and "conversation" in the manner described above.

'See Policy Statement 1220.1A, par. 8, *Washington Post I*, *supra*, at 777. The regulations specify that requests for exceptions can be made to the Director of the Bureau. Nothing

## II

Appellees assert a First Amendment right of their own to gather and report news, together with a parallel First Amendment right of the public to have them serve that function, as the basis for relief from the strictures of the Policy Statement.<sup>\*</sup> While acknowledging that the Bureau has provided some scope for gathering news in the federal institutions, appellees maintain that it is inadequate, and that person-to-person interviews are essential to the effective performance of their journalistic function in the prison setting.

The First Amendment rights of the press are, of course, a function of the paramount right of the public to information necessary to enable it to assert ultimate control over the political process.<sup>\*</sup> Although this is by now axiomatic, it is particularly important to be borne in mind in considering the regulation of press access to information concerning the administration of the correctional system. Courts must be alert to assure that the diminution of information in this area—one of increases

in the record suggests that the Director's power to make exceptions would be exercised in a manner that would significantly alter the absolute press interview ban. The District Court apparently did not feel that this power to make exceptions was a significant factor in the case, and the Government has not relied on it in this court.

\* Any First Amendment right an inmate might conceivably claim to participate in interviews with representatives of the press was not put forward as a basis for relief. However, since the position of appellees is that they should be granted general access to conduct interviews with *consenting* inmates, the line between the right of the press to conduct interviews and the right of the inmates to give them is not a bright one.

\* See, e.g., *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964); *Smith v. California*, 361 U.S. 147, 153-54 (1960); *DeJonge v. Oregon*, 299 U.S. 868, 868 (1937); *Stromberg v. California*, 293 U.S. 860, 860 (1935).

ing public concern—is no greater than is necessary for the protection of the legitimate societal interests in the effective administration of those systems.

Right of access by the press to newsworthy events is necessarily antecedent to its First Amendment right to publish. Obviously, excessive limitations on the ability to gather information would render the freedom to publish a hollow guarantee. This concept is not novel. The Supreme Court's observation in *Zemel v. Rusk*, 381 U.S. 1, 17 (1965), that the "right to speak and publish does not carry with it the unrestrained right to gather information," acknowledges, as Justice Stewart has since noted, that some right of access does exist. *Branzburg v. Hayes*, *supra*, at 728, n.4 (Stewart, J., dissenting). Indeed, one point on which all of the Justices agreed in *Branzburg* was that the right of the press to gather information is one that must be afforded some constitutional recognition. As Justice Stewart observed:

A corollary to the right to publish must be the right to gather news. The full flow of information to the public protected by the free-press guarantee would be severely curtailed if no protection whatever were afforded to the process by which news is assembled and disseminated.

*Id.* at 727. See also, *id.* at 715 (Douglas, J., dissenting); Note, *The Right of the Press to Gather Information*, 71 COLUM. L. REV. 888 (1971).

Like the right of the public to know, the right of the press to access to newsworthy events is not without limits. *Zemel*, *supra*, at 17. News gatherers are excluded from a number of governmental processes, such as grand jury proceedings, the deliberative conferences of judges, and closed executive and congressional inquiries. Nor do newsmen have a constitutional right of access to the scene of a crime or disaster when the general public is excluded, for, as Justice White has pointed out, "the First

Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally." *Branzburg, supra*, at 684. However, both logic and Supreme Court expressions suggest that the converse is equally true, that is to say, the right of access of the press to report an event is customarily as broad as the general public's access to witness it. See *Eaton v. Texas*, 381 U.S. 582, 589 (1965). Restrictions that single out members of the news media and limit their access more grudgingly than the right granted the public at large should be examined with care and upheld only where the differential treatment is in response to an identified evil associated with press attendance."

The inquiry in the present case does not end with the Government's assertion of the truism that prisons are institutions where public access is generally limited. Appellees do not seek *carte blanche* rights freely to enter federal institutions whenever they wish and to converse with any person of their choosing. Rather, they say that they should be afforded essentially the same limited rights granted the public generally—the right on occasion to enter and engage in private interviews with consenting inmates.

The Government also maintains that, in light of the alternative means of access provided the press by the Policy Statement, the prohibition against press interviews does not constitute any abridgment of the First Amendment rights of the press; since the flow of information is sufficiently assured by press inspections and incidental conversations and by the virtually unlimited ability to communicate by mail, the Bureau can protect

<sup>12</sup> For example, the restrictions imposed on press access to trials are justified by the constitutional requirement that defendants be afforded a fair trial before an impartial jury. See *Eaton v. Texas*, 381 U.S. 582, 589-90 (1965).

its legitimate interests by imposing a total ban on press interviews. However, as the Supreme Court said in *Kleindienst v. Mandel*, "[t]his argument overlooks what may be particular qualities inherent in sustained face-to-face debate, discussion and questioning." 408 U.S. 753, 766 (1972). More importantly, the Government's underlying factual premise was rejected in the District Court's findings of fact.

One of the specific questions posed by us on remand was the extent to which the accurate and effective reporting of news is critically dependent on the opportunity for private personal interviews. In the hearing following remand, the original testimony of appellee Bagdikian was supplemented at length by testimony of other persons having journalistic experience.<sup>11</sup> Mr. Arthur L. Laman, General Counsel of the New York State Special Commission on Attien, who personally supervised perhaps the most extensive series of interviews ever conducted with prison inmates, also testified. On the basis of this substantial and uncontroverted evidence, the District Court found that the sources of information provided by Policy Statement 1980.1A were inadequate to permit the news media to develop an accurate and precise

<sup>11</sup> In addition to the testimony of Mr. Bagdikian, who has done a great deal of prison reporting, the District Court heard the testimony of Mr. Roy M. Fisher, Dean of the School of Journalism of the University of Missouri and a former reporter and editor of the *Chicago Daily News*; and Mr. Timothy Leland, Assistant Managing Editor of the *Boston Globe*. The court received the depositions of Mr. Ellis Abel, Dean of the Graduate School of Journalism of Columbia University; and Mr. John W. Machacek, news reporter for the *Rochester Times-Union* and winner of a 1972 Pulitzer Prize for spot news reporting for his reporting of incidents at the Attien Prison riot. Various other exhibits relating to the relationship of interviews and reporting were also put into the record.

trating knowledge of prison conditions or events, and that accurate and effective news reporting about prison conditions is critically dependent on the opportunity for personal interviews with the inmate population. *Washington Post* 11, 857 F. Supp. at 781.

The evidence disclosed a number of characteristics common to news reporting in general, as well as certain factors unique to the prison setting, that make personal interviews particularly critical to accurate reporting in that context. In general, the testimony indicated that responsible journalists are reluctant to publish a story without first speaking personally to the source of the information in order to assess his credibility and reliability. Even when the story will not be attributed to the person from whom it came, journalists consider this form of verification to be an essential element of responsible reporting.

The general importance of personal inquiry in order to check a news story is heightened in the context of prison institutions. The percentage of functional illiterates in the inmate population tends to be high. This minimizes the effectiveness of the mail services as a vehicle for news gathering. Many of the inmates simply cannot communicate by that medium; some of the others who try are only able to read press inquiries and compose responses with the assistance of the more educated inmates. The literacy problem aside, communication by mail lacks the spontaneity and flexibility of a personal interview, and denies the reporter the ability to follow a thought. A personal interview gives feel and depth perspective.

Nor does the Bureau's policy of permitting press tours and conversations incidental thereto appear to plug the information gaps produced by the prohibition of press

interviews. Conversations initiated pursuant to press tours are of necessity random and sporadic in nature, and are considerably more limited in time and permissible scope of discussion.<sup>12</sup> Moreover, the tour conversations often occur with groups rather than with individual inmates. This both inhibits the newsmen's ability to make a careful assessment of the credibility of individual inmates and imposes significant peer group pressures on inmates to inflate or adapt their stories to correspond to the perceived desires of their fellow prisoners.<sup>13</sup>

The District Court's findings on the critical importance of interviews to effective news reporting of prison matters are supported by a substantial body of evidence of record, and indeed appear to be uncontradicted. We agree with the District Court's conclusion that personal interviews are essential to effective news reporting in the prison environment. In this context, we are mindful of Justice Blackmun's admonition in *Kleindienst v. Mandel*, *supra* p. 10, at 786, that the existence of alternative means of communication provided the press by the Bu-

<sup>12</sup> The proceedings in the District Court produced some disagreement concerning the effect of the Policy Statement's restriction of topics of conversation to "institutional facilities, programs and activities." However, the testimony uniformly indicated that "conversations" would be considerably more limited than "interviews."

<sup>13</sup> Mr. Laman testified that the comparisons of private interviews and group conversations at Attica revealed that the group interviews consistently produced more rhetoric than facts. Additionally, Mr. Laman testified that the inmates were reluctant to discuss certain topics in group conversation and that private interviews produced a more balanced assessment that generally was more favorable to the prison administration. Supp. Appendix, Vol. 1, at 60-66.



rent does not necessarily dispose of the question before us. Alternative means of communication are a relevant, but not conclusive, factor in our consideration.

### III

We emphasize that we are not confronted here with the claim that the Bureau can under no circumstances prohibit press interviews. Clearly the requirements of the Bureau often can, in an individual context, justify substantial curtailment of First Amendment protections. The issue before this court is rather one of overbreadth—whether Policy Statement 1220.1A exacts a greater toll than is justified by the admittedly legitimate interests the Bureau seeks to protect.

The Supreme Court has repeatedly cautioned that regulations touching on First Amendment freedoms must be narrowly drawn, reflecting a "principle that justifiable government goals may not be achieved by unduly broad means having an unnecessary impact on protected rights of speech, press, or association." *Bransburg*, *supra*, at 680-81. As the Court pointed out in *N.A.A.C.P. v. Button*, "Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." 371 U.S. 415, 438 (1968) (Citations omitted). See also *Kasper v. Pontikes*, 48 U.S.L.W. 4008 (U.S. Nov. 19, 1978); *Grayned v. City of Rockford*, 408 U.S. 104, 119 (1972); *Women Strike for Peace v. Mullan*, 472 F.2d 1278 (D.C. Cir. 1972).

Examined in this context, the question becomes whether the interests of the Bureau justify the absolute ban on all press interviews within all of the diverse correctional institutions of the federal system. Recognizing the difficulties inherent in placing quantitative values on

the interests served by the Bureau's broad ban on interviews, and the special sensitivity involved in examining the Bureau's judgments in prison administration, we nonetheless are bound to ask whether the Bureau has advanced "any substantial regulatory interest . . . which can justify the broad prohibitions which it has imposed." " We turn to the justifications offered to support the Bureau's total prohibition.

### 1. The "Big Wheel" Phenomenon.

The issue most contested in the District Court can loosely be characterized as the "big wheel" phenomenon. Although the phrase seems to have meant slightly different things to different witnesses, "big wheels" can be taken broadly to refer to those inmates who exert considerable power and influence within the institution.

The thrust of the testimony by many prison administrators was that press interviews with "big wheels" tend to increase their visibility and status in the prison community. This, in turn, encourages the negative and hostile elements of the prison populace by enhancing the "big wheel's" ability to encourage other inmates to fol-

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<sup>1</sup> "N.A.A.C.P. v. Hutton, 371 U.S. 415, 444 (1963). In *United States v. O'Brien*, the Court stated that a government regulation challenged on First Amendment grounds should be upheld if it "furthers an important or substantial government interest; if the government interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest," 391 U.S. 367, 377 (1968) (Emphasis added). See also *id.* at 385-89 (Harlan, J., concurring); *United States v. Robel*, 389 U.S. 258, 265-68 (1967); *Shelton v. Tucker*, 364 U.S. 479, 488-90 (1960); Note, *The First Amendment Overbreadth Doctrine*, 83 HARV. L. REV. 844 (1970).

low disruptive paths. In the end, institutional discipline, security, and rehabilitative efforts suffer."

There is no question that the problems encompassed by the "big wheel" phenomenon represent legitimate Bureau concerns that, in appropriate circumstances, can justify prohibition of press interviews. We agree with the District Court, however, that the "big wheel" justification will not support a blanket ban on all interviews with all inmates.

Examination of the proceedings before the District Court reveals how broad a prohibition the Bureau has contrived for attacking this relatively isolated evil. As previously indicated, the Bureau's Policy Statement completely bars press interviews with any inmate of any federal correctional institution, whether it be of the maximum, medium, or minimum security variety. Indeed, the Bureau's Policy Statement prohibits press interviews with persons who are employed in business establishments or attending schools pursuant to community release programs, apparently even while they are outside the institutional boundaries.

"There was some dispute in the evidence as to the relationship of press interviews, the "big wheel" problem, and the interests of the prison system. See the testimony of Mr. Boone, then Commissioner of the Massachusetts Department of Corrections, Supp. Appendix, Vol. I, at 126-130, and the deposition of Mr. Mattick, Professor of Criminal Justice and Director of the Center for Research in Criminal Justice at the University of Illinois, Supp. Appendix, Vol. II, at 604-616. However, the District Court determined that the problems encompassed by the "big wheel" phenomenon were "all real considerations and while somewhat impressionistic . . . supported by experience and advanced in good faith." *Washington Post*, *supra*, at 774. In the opinion of the District Court, his order allowed sufficient discretion to enable prison administrators to deal with this problem. See Supp. Appendix, Vol. I, at 181, 278.

While establishing the reach of the interview prohibition is a simple task, defining the group of inmates who might pose a threat to the interests of the penal system is not. Obviously, not all inmates represent a threat to the discipline or order of federal institutions. The testimony of Mr. Alldredge, Warden of the federal maximum security prison at Terre Haute, Indiana, indicated that only some ten percent of the inmate population in most prisons can be considered troublemakers and that, of that number, only some five percent are "most difficult." Since the "big wheel" theory is predicated on the leadership characteristics of a portion of the inmates, the potentially troublesome "big wheels" obviously must derive from the group of troublemakers and probably constitute less than the entirety of their number. Thus, although the number is admittedly imprecise, the total number of troublemaking "big wheels" is unlikely to exceed ten percent and should logically be expected to comprise a significantly smaller percentage." Moreover,

"Testimony of Warden Alldredge, Supp. Appendix, Vol. 1, at 184. The testimony of other state prison administrators tended generally to support this figure. See testimony of Mr. Boone, Supp. Appendix, Vol. 1, at 189-140; testimony of Mr. Walnwright, Director of the Florida Division of Corrections, Supp. Appendix, Vol. 1, at 281.

"Some problem is occasioned by the imprecision of the term "big wheel." Some of the witnesses seemed to consider a "big wheel" to be anyone with significant status and influence in the prison community. Other testimony suggested that some prison administrators used the term "big wheel" to refer primarily to disruptive leaders. This problem does not alter our analysis. Certainly prison administrators should have no concern about publicly enhancing the prestige and influence of the leaders of the prison community who generally cooperate in maintaining order. Thus, to the extent that "big wheels" include cooperative as well as disruptive persons, the isolation of the evils presented by the "big wheel" phenomenon is further accented.

Moreover, to the extent that inmates talk to a reporter or

while there was no testimony on this point, it would seem that the percentage of troublemakers might be expected to be smaller in the medium and minimum security institutions, and perhaps virtually nonexistent among those inmates who are allowed to participate in release work or study programs.

The Bureau interview prohibition, however, encompasses all of those persons—"big wheels," cooperative inmates, even those who are permitted to spend a considerable portion of their time in the community at large. Absent some support to be derived from other considerations advanced by the Bureau, Policy Statement 1220.1A is too broad a prohibition to be supported by the Bureau's "big wheel" justification. The Government has not indicated that it is unable generally to recognize troublesome "big wheels" in advance, and the evils encompassed by that phrase must be dealt with on a more selective basis.<sup>12</sup>

### *2. The Federal Policy of Uniformity:*

The other major justification advanced by the Bureau is that its policy of granting uniform treatment to all

on individual, confidential basis, giving what are essentially "not for attribution" interviews, there is no problem of enhancement of a prisoner's status from forthcoming publicity. While prison administrators would not administer a program of prison interviews in terms of a not-for-attribution standard, the reality that reporters can and do operate on this basis is not an insignificant aspect of the total picture.

<sup>12</sup> It was asserted in oral argument that press interest is generally limited to "big wheels" and therefore that, in practical effect, the prohibition is not as broad as it might appear. The untenable premise of this argument seems to be that, since the press generally will not be interested in interviewing the average inmate, the Bureau can prohibit those interviews along with those of the troublemaking "big wheels."

inmates precludes the establishment of any system that would require individual distinctions to serve as the basis for deciding whether to allow press interviews. Pointing out that the federal system constantly shifts inmates from one institution to another, the Bureau urges that any rule allowing different treatment in different institutions would incur the resentment of the inmates who are transferred into the more strictly administered facilities.

In part, this argument seems to misconstrue the order of the District Court. It appears from the testimony that much of the Bureau's concern regarding the uniformity issue was focused on the possible discontent that would result from a transfer from an institution that imposed a fairly loose restriction to one that adhered to a tighter standard. Thus, it appears that this aspect of the Bureau's concern rests on the seemingly erroneous assumption that the District Court order would require the Bureau to differentiate on an institutional basis by imposing one standard for interviews in a minimum security institution, another for medium security facilities, and yet a third for maximum security prisons.

This misses the thrust of the order, which is to require the Bureau to make distinctions that are based on the individualized requirements of a particular institution at a particular time, as well as on the personal attributes of the inmate seeking to participate in the interview. Compliance with the order should not generate significant discontent based on the application of vastly different standards at different institutions, for the general standard to be applied in all facilities is the same. The discontent that might be expected to arise from the transfer of inmates from one institution to another seems more likely to derive from the fact that dif-



ferent wardens might be expected to administer prison regulations somewhat differently."

To the extent that decisions affecting the denial of interviews would be influenced by a greater general concern for security in a maximum security institution, variations in press interview policy would not seem to differ in kind from any number of decisions concerning general inmate privileges. An inmate transferred into a facility with greater security needs might encounter closer confinement and greater limitations on his personal privileges. It would seem that much of his resentment of the transfer would stem from the more generalized fact of having been shifted to a more tightly administered institution. Certainly the incremental resentment that might be attributed to the specific decision to deny permission to participate in an interview does not significantly contribute to the other justifications offered in support of the absolute interview ban. Even when combined with the "big wheel" justification, this factor does not support the total ban imposed by Policy Statement 1220.1A.

The Bureau additionally asserts that the District Court order would require violation of another aspect of its policy of uniform treatment of inmates. The Bureau's present policy is said to allow only for distinctions to be made on the basis of the "correctional needs" of the inmates. The District Court order, we are told, would require that press interview decisions be based on the

"For example, the Bureau regulation governing visitation rights of other persons contemplates individualized administration by the wardens of the various institutions, and recognizes that the facilities and requirements of each institution may require some differences in visitation rights. These differences might be expected to generate some inmate resentment, as will administration of any inmate privilege that might differ in some respects from one institution to the next.



"status" of the inmate seeking to participate in the interview.

Like the District Court, we find the Bureau's distinction between "status" and "correctional need" to be somewhat opaque. If, for example, a decision to confine an inmate to a period of solitary confinement or to restrict some of his other privileges in response to repeated instances of his violent behavior is a decision based on his "correctional needs," so might be one to deny a press request to interview him when that same conduct creates a substantial problem that the interview would create further disciplinary difficulties in the institution."

"The Bureau previously suggested other considerations which it did not forcefully advance in the appeal to this court, but which we consider appropriate to examine. The Bureau advanced its administrative needs as one justification for the imposition of its total interview ban. This, of course, is a legitimate concern that can be accommodated by an individualized standard for determining when to grant interviews. However, this problem is no different from that posed by the administration of other visitation privileges and can be dealt with in a similar manner. If an institution is besieged with a staggering number of requests to interview an inmate, it can legitimately devise some means of restricting press interviews to manageable proportions. For example, prison administrators might wish to impose a ceiling on the number of interviews in which an individual inmate could participate and allow the inmate himself to choose the particular reporters to whom they will grant interviews.

A second administrative concern voiced by the Bureau is the potential increase in litigation that might ensue from a system that requires it to make individual determinations. This concern is not without foundation. However, the burden should not be as monumental as the Bureau seems to think. For example, if a decision to deny permission for interviews is based on a general condition of unrest prevailing at the institution at the time, one case might dispose of the issue entirely until such time as the disruptive conditions were dissipated. If, on the other hand, denial of a series of interviews with a particular inmate was based on the threat that

Thus, while we do not question that the concerns voiced by the Bureau are legitimate interests that merit protection, we must agree with the District Court that they do not, individually or in total, justify the sweeping absolute ban that the Bureau has chosen to impose. When regulating an area in which First Amendment interests are involved, administrative officials must be careful not only to assure that they are responding to legitimate interests which are within their powers to protect; they must also take care not to cast regulations in a broad manner that unnecessarily sacrifices First Amendment rights. In this case the scope of the interview ban is excessive; the Bureau's interests can and must be protected on a more selective basis. Thus, the First Amendment commands that the Bureau articulate a policy that requires the decision to grant or deny a requested interview to respond more precisely to the particular evils posed by that request."

this individual posed to the order and security of the institution, one case likewise should dispose of the contest for a comparable period of time. In short, the Bureau should not expect that the denial of fifty requests for interviews should necessarily lead to anything approaching fifty show cause orders. More importantly, we do not feel that the incidental burden of defending the legitimacy of its decisions is a factor that merits substantial weight in our decision. Repeatedly parties complain that the "recognition" or "expansion" of constitutional rights will result in a flood of litigation by those who step forward to demand that that right be afforded them. Repeatedly, however, courts recognize that their essential duty is to vindicate those rights.

"We are aware of the Ninth Circuit decision rejecting a First Amendment challenge to these same regulations. *Seattle-Tacoma Newspaper Guild v. Parker*, 480 F.2d 1082 (1973). There the court concluded that the Bureau's regulations constituted a reasonable action within the broad scope of discretion granted in the administration of maximum security institutions, but specifically refused to express any views as to the constitutionality of the application of those

## IV

Some of the Bureau's resistance to the District Court order may stem from a misunderstanding of the scope of that ruling and the degree of latitude it provides." The District Court repeatedly requested that the Bureau assist it by proposing regulations that would focus the interview policy more precisely on the problems that might arise in the individual case. The Bureau refused, however, apparently feeling that the order permitted it no flexibility for making selective judgments. Instead, the Bureau repeatedly offered evidence of individual instances in which interviews with "big wheels" resulted in institutional disruption, notwithstanding the District Court's insistence that its order would allow prison administrators to deny permission to interview "big wheels" whenever the interview would be likely to cause serious administrative or disciplinary problems. *See* note 15, *supra*. Finally, the Government asserted to this court

same regulations in federal facilities having lesser security needs. *See also* *Procunier v. Hillery*, 864 F. Supp. 196 (N.D. Calif. 1978), *prob. juris. noted*, 42 U.M.L.W. 8886 (Jan. 8, 1974); *Pell v. Procunier*, *prob. juris. noted*, 42 U.M.L.W. 8416 (Jan. 22, 1974). We note, however, that the views expressed in our opinion have found support in District Courts in the First and Fifth Circuits. *See* *McMillan v. Carlson*, Civil No. 72-2551-M (D. Mass. 1978); *Houston Chronicle Publishing Co. v. Kleindienst*, 864 F. Supp. 719 (N.D. Tex. 1978).

"The part of the District Court order contemplating discretionary denials is as follows:

[Exceptions authorizing denials] shall be precisely drawn to prohibit an interview only where it can be established as a matter of probability on the basis of actual experience that serious administrative or disciplinary problems are, in the judgment of the prison administrators directly concerned, likely to be created by the interview because of either the demonstrated behavior of the inmate concerned or special conditions existing at the inmate's institution at the particular time the interview is requested.

*Washington Post I, supra*, at 779.

that the order required that any denial of permission to conduct an interview be based on objective evidence.

This all indicates that the Bureau perhaps has read the District Court order more narrowly than was intended. The District Court's candid observation that some of the considerations advanced by the Bureau were "somewhat impressionistic," and its feeling that even these interests could properly be protected by the prison administrator's exercise of discretion, suggest that decisions on requests for interviews need not be based on "objective evidence," as the Bureau seems to fear. Courts are fully aware of the difficulties involved in making judgments in this area, and thus will be chary of impinging upon the province of the administrator. Once the warden has exercised his power "negatively on the basis of a facially legitimate and bona fide reason," the court is not to engage in any further balancing of First Amendment considerations. *Kleindienst v. Mandel, supra* p. 10, at 770.

The purpose and design of the District Court order, as we read it, is to require that the administrator who is closest to the situation make a considered judgment based on information concerning the individual inmate and the conditions prevailing at the institution at the time the interview is sought. What is contemplated by both the District Court and this court is not that prison administrators conduct a trial, or even an abbreviated administrative hearing. It is simply that they exercise their best judgment, based on facts known to them. The District Court requirement that denials of interviews because of the disruptive actions of an individual inmate be based on his "demonstrated behavior" is not a requirement that prison administrators compile a complete dossier as a prelude to determining whether to grant an interview. It simply requires that the decisions, while sometimes grounded on "impressionistic" judgments, have a basis in the actual conduct of the inmate. To require

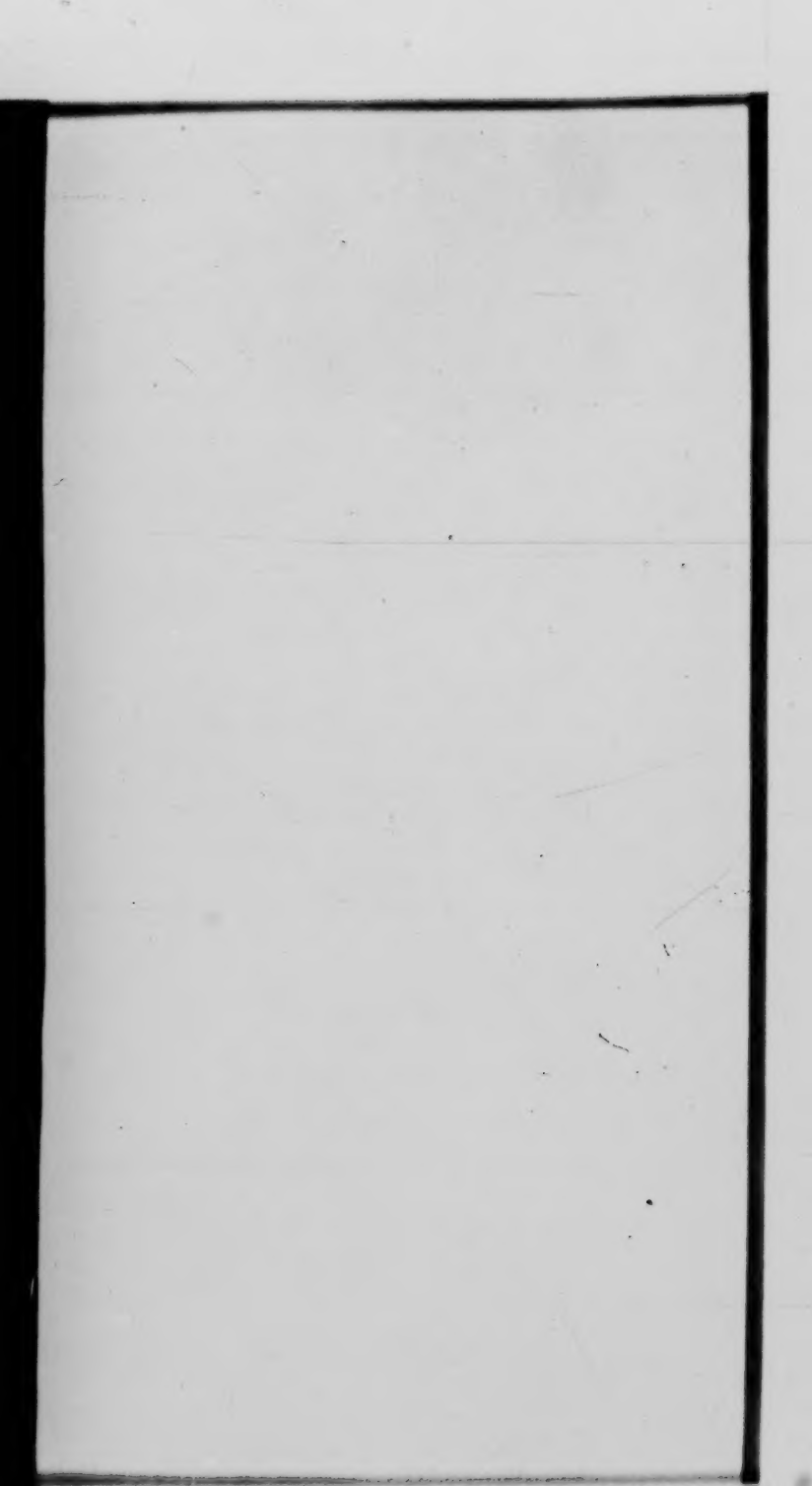
any less would be to replace the existing closed system with one that is so subjective as to render uniformity impossible and judicial review illusory.

In sum, we think that the District Court order, properly interpreted and followed, simply requires that administrators of the federal correctional institutions make individual judgments based on their perceptions of the current requirements of their institutions, and the likely effect of a particular interview on the proper functioning of the institution. Admittedly, this will occasionally require them to make difficult decisions. But, when First Amendment rights of the press and the public weigh in the balance, such decisions are inescapable.

Only in one minor regard do we find difficulty with the District Court order. We fear that the District Court's juxtaposition of the "probability" of serious problems and the "likelihood" of their occurrence in its definition of the conditions that would warrant a denial of a request to conduct an interview may prove somewhat confusing. Accordingly, we recast that portion of the District Court order to require that interviews be denied only where it is the judgment of the administrator directly concerned, based on either the demonstrated behavior of the inmate, or special conditions existing at the institution at the time the interview is requested, or both, that the interview presents a serious risk of administrative or disciplinary problems. The order of the District Court is affirmed as modified.

In view of the fact that it has been stayed by the Supreme Court pending this appeal, and that the Supreme Court has subsequently noted probable jurisdiction in cases generally involving the same issue, our mandate is stayed pending application to the Supreme Court for a writ of certiorari within 90 days, and thereafter as provided in Rule 41(b), Fed. R. App. Pro.

*It is so ordered.*



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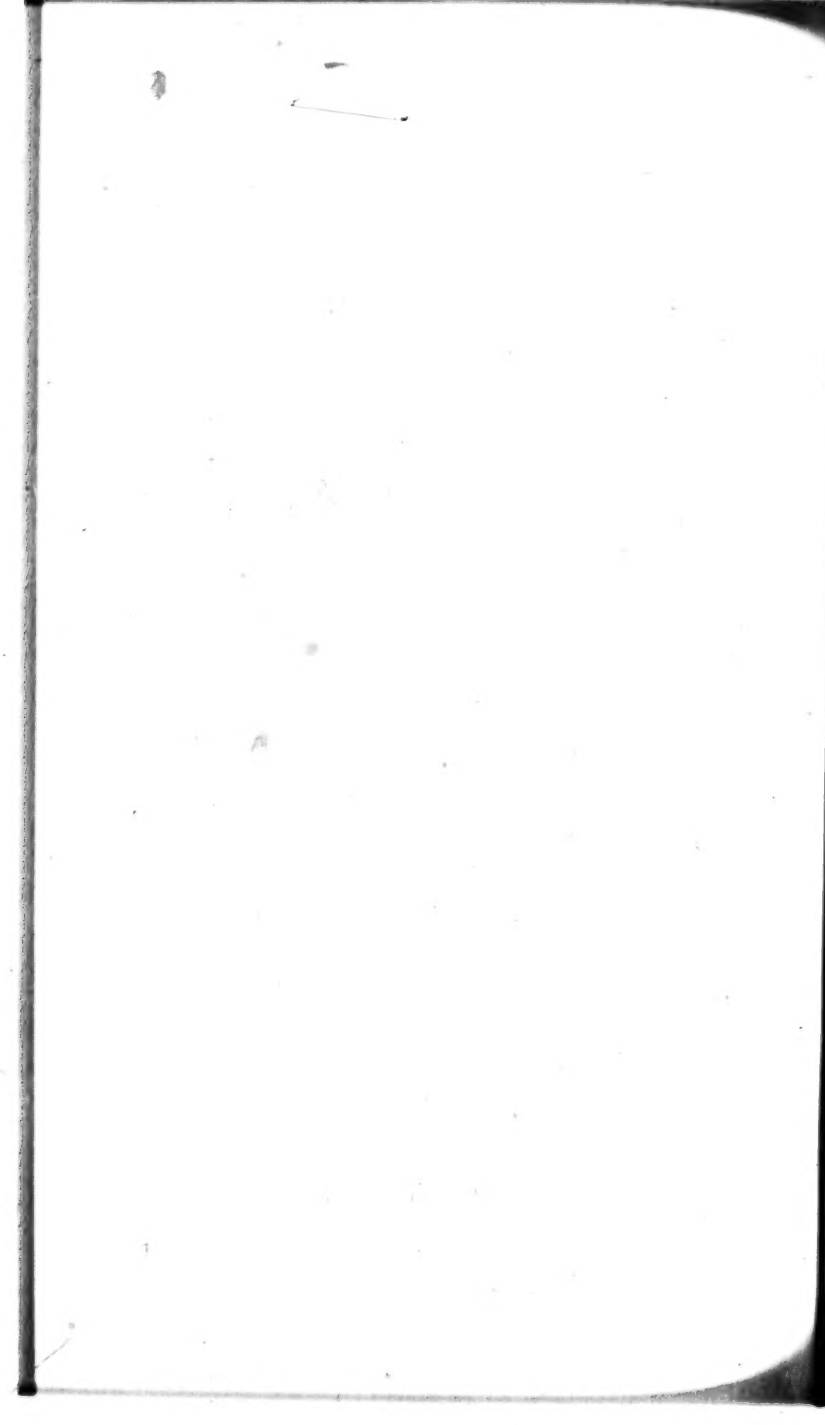
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# In the Supreme Court of the United States

OCTOBER TERM, 1973

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No. 73-1205

WILLIAM B. SAXBE, ATTORNEY GENERAL OF THE UNITED STATES, AND NORMAN A. CARLSON, DIRECTOR, UNITED STATES BUREAU OF PRISONS, PETITIONERS

v.

THE WASHINGTON POST CO. AND BEN H. BAGDIKIAN

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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## BRIEF FOR THE PETITIONERS

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### OPINIONS BELOW

The opinion of the court of appeals (Supp. Pet. App. F, 3-26) is unreported. The district court's opinions of April 5, 1972 (Pet. App. A, 13-28) and December 19, 1972 (Pet. App. B, 29-36) are reported at 357 F. Supp. 770 and 779. The court of appeals' order of September 6, 1972 (Pet. App. C, 37-39) is reported at 477 F. 2d 1108.



## **JURISDICTION**

The judgment of the court of appeals (Supp. Pet. App. F, 3-26) was entered on February 21, 1974. A petition for a writ of certiorari before final judgment was filed on February 15, 1974. A supplemental petition for a writ of certiorari was filed on February 22, 1974, after the court of appeals entered final judgment, and certiorari was granted on March 4, 1974. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

## **QUESTION PRESENTED**

Whether the policy of the federal Bureau of Prisons prohibiting press representatives from conducting individual face-to-face interviews with federal prisoners violates the First Amendment.

## **CONSTITUTIONAL AND POLICY PROVISIONS INVOLVED**

The First Amendment to the Constitution of the United States provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Bureau of Prisons Policy Statement No. 1220.1A (February 11, 1972) provides in part:

§ 4b(6). Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not

to be made public, if it is limited to the discussion of institutional facilities, programs and activities.<sup>1</sup>

#### STATEMENT

1. This action, brought by a newspaper and one of its reporters on March 10, 1972, challenges as unconstitutional a provision of a Bureau of Prisons policy statement prohibiting personal interviews of inmates. (Policy Statement No. 1220.1A, § 4b(6), Pet. App. D, 40-45, 42). The Policy Statement was issued on February 11, 1972, after a review by the Bureau of Prisons of its previous policy relating to inmate-press communication. That previous policy, one of longstanding duration but first formally stated in a policy statement issued in 1966 (App. 71-73), prohibited all communication between inmates and the press.

The review was conducted to determine the appropriateness of that policy in light of current social and prison conditions, and particularly contemporary jurisprudential developments (App. 211-212, 224). The review included consultations with administrators of state systems and a several day conference in Washington with institutional wardens from throughout the federal system. The objective of the review was to develop a policy compatible with the responsibilities of the system for the internal control and supervision of the institutions (App. 211-212).

In this review explicit consideration was given to permitting face-to-face prison interviews. Indeed, a proposed interview policy was drafted, circulated and

<sup>1</sup> Policy Statement No. 1220.1A is reprinted in its entirety, Pet. App. D, 40-45.

extensively discussed within the Bureau of Prisons system and with administrators of state prison systems (App. 269-275, 280-281). After this extensive process of review and consultation, the Director of the United States Bureau of Prisons determined that a policy permitting such interviews would not be compatible with the sound administration of the federal prison system (App. 75-76, 280-281). Instead, he promulgated a new policy statement continuing the prohibition of interviews, but changing the policy relating to inmate mail to permit uncensored press-media communication by means of letters (App. 75-77).

The dilemma with which the Bureau of Prisons has grappled in the formulation of its press-inmate communications policy has been the conflict between the desirability of a policy generating information for the press and the belief, supported by the experience of prison administrators, that certain kinds of inmate-press communication, particularly when in the form of interviews, can lead to serious security, disciplinary, and morale problems within prison institutions (App. 217). If all interviews are permitted, then those inmates who through the press call for prisoner rebellion and resistance have their influence increased and magnified (App. 217). If some interviews are to be permitted and others denied, institutional wardens will be required to make subjective and necessarily arbitrary decisions concerning a privilege of importance to inmates (App. 218).

"[T]he problem we have," testified Mr. Norman Carlson, Director of the United States Bureau of

Prisons, "is how we can develop a policy and procedure which are not arbitrary left in the hands of the warden \* \* \* [and] which would not at the same time permit the very negative, hostile, anti-social individual from developing himself into a very negative force within the institution? That is the problem we are grappling with; we did grapple with" (App. 218-219).

The proposed policy statement of the Bureau of Prisons authorizing interviews would have permitted all interviews requested by the press and desired by the inmate without regard to their content or effect, but would have subjected those interviews to detailed constraints as to number, time, recording, availability to other journalists, and so on (App. 271-275). The Bureau finally decided, however, that such a uniform policy would be incompatible with the sound administration of the prison system and that a non-uniform interview policy would present insuperable problems of perceived unfairness and constitutionally inappropriate content regulation. It decided, instead, to permit unlimited communication between inmates and the press by means of uncensored letters and to continue the absolute prohibition of face-to-face interviews of inmates (App. 75-77, 280-281).

2. On April 11, 1972, after an evidentiary hearing, the district court entered an order (Pet. App. A, 26-28) declaring that the prohibition of press interviews with federal prisoners was unconstitutional. The district court found that the Bureau's decision had been made "only after serious deliberation and study." It

summarized the considerations in support of the Bureau's policy as follows (Pet. App. A, 18-19):

(1) Excessive press attention to a relatively few notorious prisoners has detracted measurably from their rehabilitative treatment and imposed administrative difficulties.

(2) When press interviews are held they receive immediate wide attention throughout the prisons and the importance of the prisoner interviewed is exaggerated among other inmates. Thus prisoners receiving wide press attention may become "big wheels" and have their status within the prison community enhanced to a point that seriously interferes with effective discipline. *Scale v. Manson*, 326 F. Supp. 1375 (D. Conn. 1971).

(3) A few prisoners may use the medium of the press to foster revolt within the walls. All news that goes out comes back in by newspaper, television and radio. Angry words, false accusations and protest geared to violence can light a fuse that erupts the pent-up emotions of inmates who may feel neglected and abused.

The district court concluded that "[t]hese are all real considerations and while somewhat impressionistic, they are supported by experience and advanced in good faith" (Pet. App. A, 19). The court held, however, that the prohibition was unconstitutional because "[i]f it is possible to prevent the difficulties and excesses feared by far less restrictive measures" (*ibid.*). The court declared: "[U]nder the First Amendment, subject to reasonable restrictions as to time and place, the press has a right of access to interview con-

identially and without censorship any inmate of a federal correctional institution who consents to be interviewed, except where it is determined that serious administrative or disciplinary problems are likely to result from the particular interview sought" (Pet. App. A, 27).

The district court and the court of appeals refused petitioners' requests for a stay pending appeal. On May 12, 1972, this Court granted a stay pending appeal (406 U.S. 912).<sup>\*</sup>

The court of appeals in September 1972 remanded the case to the district court for reconsideration in light of *Branzburg v. Hayes*, 408 U.S. 665 (decided June 29, 1972) and directed it to make specific findings on a number of issues, including the necessity of personal interviews and the justifications for the interview ban of Policy Statement No. 1220.1A (Pet. App. C, 37-39).

After an evidentiary hearing on November 21-22, 1972, the district court filed a supplemental memorandum in which it adhered to its previous order and judgment (Pet. App. B, 29-36). The court found, on the basis of the evidence, that petitioners "have not imposed a news blackout on events and conditions at federal prisons, as the plaintiffs have alleged in their papers," and that "[t]he sources of information about federal prisons \* \* \* which are available to the news media under Policy Statement 1220.1A enable newsmen to obtain some information about events and

<sup>\*</sup>In accordance with the order of the district court, the Bureau of Prisons on May 8, 1972 authorized respondents to interview seven inmates at Lewisburg.

conditions at federal prisons" (Pet. App. E, 51, incorporated by reference at Pet. App. B, 36).

The court also concluded that "accurate and effective reporting of news about prison conditions and events and prisoner grievances has a critical dependence upon the opportunity for face-to-face interviews with inmates" (Pet. App. E, 57, incorporated by reference at Pet. App. B, 36). The court interpreted *Hranzburg* to hold that "news gathering qualifies under the First Amendment and newsmen must be afforded some protection for seeking out the news lest freedom of the press be eviscerated," and further to hold that the press's putative First Amendment right of access to news sources "can only be infringed when the Government demonstrates a 'compelling' or 'paramount' need" (Pet. App. B, 33). The court concluded that the policy considerations advanced by the Bureau "totally failed to demonstrate any 'compelling' or 'paramount' need" for the "absolute ban" of interviews (Pet. App. B, 34). Accordingly, the court reaffirmed its earlier decision.

The parties thereafter filed supplemental briefs with the court of appeals, which heard oral argument and took the case under submission on July 24, 1973. While the case was still pending in the court of appeals, this Court noted probable jurisdiction in *Procunier v. Hillery*, No. 73-754 (January 7, 1974), and *Pell v. Procunier*, No. 73-918 (January 21, 1974), which present issues closely related to those involved here. Accordingly, on February 15, 1974, petitioner filed a petition for a writ of certiorari before judgment.



On February 21, 1974, while our petition was pending in this Court, the court of appeals issued its decision, affirming the judgment of the district court, with some modification (Supp. Pet. App. F, 3-26). The court of appeals held that the "[r]ight of access by the press to newsworthy events is necessarily antecedent to its First Amendment right to publish. Obviously, excessive limitations on the ability to gather information would render the freedom to publish a hollow guarantee" (Supp. Pet. App. F, 10). The court agreed with the district court "that personal interviews are essential to effective news reporting in the prison environment" (Supp. Pet. App. F, 14) and it framed the central issue in the case as whether the Bureau's interview ban was overbroad. The court concluded that "while we do not question that the concerns voiced by the Bureau are legitimate interests that merit protection \* \* \* they do not, individually or in total, justify the sweeping absolute ban that the Bureau has chosen to impose" (Supp. Pet. App. F, 23).

The court of appeals discussed at length the remedy proposed by the district court. "What is contemplated by both the District Court and this court is not that prison administrators conduct a trial, or even an abbreviated administrative hearing" (Supp. Pet. App. F, 25). Rather, the court of appeals viewed the district court order as requiring that "administrators of the federal correctional institutions make individual judgments based on their perceptions of the current requirements of their institutions, and the likely effect of a particular interview on the proper functioning of

the institution. Admittedly, this will occasionally require them to make difficult decisions. But, when First Amendment rights of the press and the public weigh in the balance, such decisions are inescapable" (Supp. Pet. App. 16, 20). The court of appeals modified the order by eliminating the requirement that the individual prison administrator make a decision on the basis of the "probability" that serious problems would be caused by the grant of an interview (*ibid.*).

### SUMMARY OF ARGUMENT

#### I

The Bureau of Prisons' policy prohibiting personal press interviews with individual inmates is reasonably designed to further sound objectives of prison administration. The ban on such interviews, part of the Bureau of Prisons' overall public information policy set forth in Policy Statement No. 1220.1A, is justified by three considerations. First, interviews create an incentive for and are likely to lead to newsworthy rhetoric and disruptive behavior situations in the prisons; second, the granting or denying of interview requests on an individual basis would itself lead to disruptive situations; and third, a uniform policy is necessary. The Bureau's ban on personal interviews was adopted by the Bureau of Prisons only after extensive consultation with the senior officials of the Bureau of Prisons and administrators of state penal systems. After such consultation, the Director of the Bureau of Prisons determined that in his judgment, based upon his and his staff's familiarity with federal prison conditions,

these factors made a policy permitting such interviews unwise.

Individual press interviews with some inmates will cause them to become leaders within the institutions, exercising influence over other inmates, and if their message is disruptive, it will cause morale and disciplinary problems within the prisons. In the institutional life of the prison, the media plays an important role in the life of inmates. A reporter coming to interview a particular prisoner is a significant institutional event. Inmates desiring media attention and who were not known before their incarceration may conclude that the path of militance and disruption is the only way to gain press attention. The possibility of interviews with the press increases the incentives for such conduct. Although many such interviews may not lead to difficulty, it is difficult to predict in advance which ones will and which ones will not, because of the complexity of the human reactions involved.

If prison officials must decide on a case-by-case basis what interviews to grant and what to deny in terms of the anticipated effect of the interview on the proper functioning of the institution, they will be required to make difficult subjective judgments. Prisoners known to harbor hostile and critical views about prison conditions are likely to be denied interviews, while prisoners considered sympathetic and friendly will be granted permission. This pattern is likely itself to further morale and disciplinary problems in the institution. The record contains a number of examples showing various interviews that have in fact

been harmful to the functioning of prisons, both in the federal system and in a number of state systems.

Although some interviews could with confidence be permitted without fear of difficulty, there are important considerations of penal administration supporting a uniform prohibition. Equality of privileges is an important tenet of correctional administration if not correctional justice. Inmates view press access as a privilege. If decisions are made on an interview-by-interview basis, it is inevitable that militant members of minority groups will be denied interviews more frequently than others. Members of those groups will consider this unfair treatment and this will in turn contribute to severe morale and disciplinary problems within the institution.

These considerations are important not only within a single institution but within the federal prison system itself. Because of frequent transfers, prisoners are fully informed about the entire system and view it as one. Differences in treatment between institutions would contribute to difficulties upon transfer because a prisoner transferred to an institution in which media access is largely denied would consider this one more proof of the unjust motives for his transfer. The complex and far flung nature of the federal prison system makes supervising any discretionary policy to assure that it is properly administered difficult and time-consuming.

## II

The Director of the federal Bureau of Prisons has broad discretion in operating the prison system and

the courts exercise only limited review of his actions. The formulation of public information policy is a matter within his authority, conferred upon the Attorney General by statute and delegated to the Director by regulation. Courts have uniformly held that supervision of inmates of federal institutions rests with the proper administrative authorities and that courts have no power to supervise the management and disciplinary rules of such institutions.

This broad discretion of the Attorney General is comparable to his wide authority to exercise the plenary congressional power to exclude aliens. In *Kleindienst v. Mandel*, 408 U.S. 753, the Court declined to look behind the Attorney General's exercise of that discretion to exclude an alien for a facially legitimate and bona fide reason even though the exclusion interfered with the desire of American citizens to communicate in person with him.

The decision by the Director to prohibit inmate press interviews is within the scope of his discretion, because such interviews would cause serious problems in the prison system, as explained at length in Part I. The Director's decision does not amount to a blackout of information about the prison system, and in fact the record shows that a great deal of information about the federal prison system is readily available to the press. The policy does not discriminate against the press because the press seeks a right not available to the public generally and because the difference in treatment between the press and other visitors such as friends and attorneys is based upon sound considerations of penal administration.

The denial of inmate press interviews does not violate the First Amendment. The decisions of this Court teach that government action does not violate the First Amendment merely because it does not facilitate the press's performance of its function to the maximum extent possible. Thus, in *Bransburg v. Hayes*, 408 U.S. 605, the Court held that compelling a reporter to testify before a grand jury about information obtained in the course of his professional activities did not violate the First Amendment, even though such testimony might have an impact on the willingness of some sources of information to communicate freely with him.

The denial of press interviews with inmates does not unconstitutionally abridge the freedom of the press because of the sound justifications for the denial and because other sources of information about the federal prison system are available. This is not a case involving the rights of the press to publish and circulate free from government control. There is no claim that the Bureau of Prisons has attempted in any way to prevent respondents or other members of the press from freely publishing or circulating any reports concerning prison conditions and prisoner complaints. The only issue here is whether the First Amendment gives the press the right to use a particular technique of news gathering--the confidential personal interview--inside the walls of federal prisons.

If the First Amendment is construed to give "the press" a right to interview prisoners, there will be serious and difficult questions of interpretation and application. The "press" is not a clearly defined, iden-

tifiable group, but a vague and broad concept. Granting confidential prisoner interviews to every person with a plausible claim of an intent to write would create an intolerable situation for the federal prison system. The decision of the court of appeals will require the Bureau of Prisons and ultimately the federal judiciary, to determine which prospective writers and speakers have First Amendment rights of access and which do not. This Court cautioned against the dangers of such a path in *Branzburg v. Hayes*, 408 U.S. 665, 703-704. Further practical problems of definition and application will follow. Can the television journalist enter to conduct interviews? What about other journalistic techniques designed to capture and compellingly report the truth?

Although the courts below found that interviews are essential to effective news reporting in the prison environment, that conclusion is questionable on the present record. The testimony of Arthur Luman, General Counsel of the New York State Special Commission on Attica, shows that private interviews with prisoners are essential to get the truth, and other parts of the record show that press interviews with inmates in prisons will not be private. The prison is a society in which inmates face sanctions and rewards not just from the administration but from other inmates, and statements likely to be publicly reported will be made with that fact in the forefront. The courts should not become involved in this process of determining which journalistic techniques are essential and which are not.



The decision of the court of appeals improperly requires that a problem best left to the flexibility inherent in informed administrative discretion be addressed only within the framework of constitutional adjudication. Courts should not freeze the necessarily dynamic process of interaction between the press and the administrator into a constitutional holding.

## ARGUMENT

### I

THE BUREAU OF PRISONS' REFUSAL TO PERMIT PERSONAL PRESS INTERVIEWS WITH INDIVIDUAL INMATES IS REASONABLY DESIGNED TO FURTHER SOUND OBJECTIVES OF PRISON ADMINISTRATION

Both the district court and the court of appeals agreed that the harmful effect of some press-inmate interviews justifies a prohibition of all interviews that are thought to have such effect. The two courts differed, if at all, only as to the showing required to support a denial. The courts, however, concluded that a ban on all interviews was not justified. We submit to the contrary that the record fully justifies the ban. It is supported by the following considerations: (1) interviews create an incentive for and are likely to lead to newsworthy rhetoric and disruptive behavior by otherwise orderly inmates; (2) the granting or denying of interview requests on an individual basis would create serious problems for prison officials and would be likely to lead to disruptive situations in the prisons; (3) the need for a uniform policy.

*A. Interviews create an incentive for newsworthy rhetoric and are likely to result in disruptive behavior.*

Mr. Carlson testified that a policy permitting interviews " \* \* \* would give notoriety to those individual inmates and cause them to become leaders, so to speak, in the institution. As you know, an institution is a total community, and when some inmates receive a great deal of attention, be it from the press or other means or other parts of our society, they do tend to rise up into a leadership role. At times, this can have a very negative effect on the institution and the environment of the institution" (App. 217).

Mr. Carlson also stated that there would be "much less notoriety" in connection with correspondence between a newsmen and an inmate than "where the press actually makes a trip, frequently many miles, to an institution, and the inmates in the institution immediately know that the press is present and there for one purpose, and that is to interview this one particular inmate" (App. 220-221). This assessment was shared by Ian V. Brewer, Warden of the Iowa State Penitentiary, who testified that there was more of a problem with face-to-face interviews than with interviews by correspondence. The district court asked Warden Brewer (App. 440):

So that if a newspaper got a letter from one of these leaders, or Big Wheels, or whatever you call them, and it was published in full text on the front page of the local paper, and it came back into the prison, that wouldn't have any real effect on the man's stature? It

wouldn't influence it at all? It would be only if he had talked to the man?

Warden Brewer replied (App. 440):

We have had that thing to [sic] happen and it didn't seem to have any great effect on the general climate of the institution, as did the interview situation.

Warden Brewer further stated that when the press comes into an institution to conduct an interview, that fact becomes known to the inmate population at large "almost immediately" (App. 440).

Mr. Carlson's appraisal of the effect of allowing face-to-face interviews was supported by the testimony of Noah L. Alldredge, Warden of Lewisburg Penitentiary (App. 175-176); John J. Norton, Warden of Danbury Penitentiary (App. 199-200); Lem V. Brewer, Warden of the Iowa State Penitentiary (App. 436, 439); Louis L. Wainwright, Director of the Division of Corrections of the State of Florida (App. 422-423); and Raymond K. Proenier, Director of Corrections for the State of California. Proenier stated that, at one time, California permitted the press to conduct interviews with prison inmates, but that this policy had been discontinued because of damaging experiences which resulted from such interviews (App. 155-157, 159-160).<sup>2</sup>

The conclusion of the courts below that these ad-

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<sup>2</sup> As an example, Mr. Proenier noted the case of George Jackson, who was "relatively unknown" outside the prison until press interviews helped make him "more and more notorious" (App. 156-160).

verse effects could be dealt with on a case-by-case basis rests upon a simplification of what, in the jargon of this case, has become known as the "big wheel" phenomenon. The court of appeals described it as follows (Supp. Pet. App. P, 16-17):

[I]nterviews with "big wheels" tend to increase their visibility and status in the prison community. This, in turn, encourages the negatives and hostile elements of the prison populace by enhancing the "big wheel's" ability to encourage other inmates to follow disruptive paths.

Based upon this theory of the Bureau's interview ban, the court of appeals held that application of the interview ban to all inmates makes it overly broad. This reasoning ignores two important additional considerations.

First, and most importantly, the availability of interviews itself generates an incentive for newsworthy behavior, and in prisons newsworthy behavior is often destructive behavior. As Mr. Carlson explained: "Based on my experience in institutions and from being in the central office in Washington, there is a very small segment of the inmate population that is of any interest at all to the press. The notorious inmates, of course, have already been well documented. [Those famous prior to incarceration.] \* \* \* At the same time, the press is interested in some of the more hostile, militant inmates that do present problems in terms of management and control of the institution" (App. 219). Thus for the inmate who does not bring his fame with him to the gate, the only likely road to press attention is a disruptive one.

The record shows that inmates have a strong interest in the media, which is not fully reciprocated. The printed page and television program enter the prisons freely, with practically no censorship (Federal system: App. 185, 200; California system: App. 158-159; Massachusetts system: App. 339-340). There they play an important role in the life of inmates. As the district court found, "Newspapers, magazines, radio and television programs pour in incessantly throughout the day" (Pet. App. B, 32). Noah L. Alldredge, Warden of the United States Penitentiary at Lewisburg with an average inmate population of 1850 (App. 172-173), testified that on a single day 88 letters were set out to the press under the Bureau's open mail policy (App. 183). John J. Norton, Warden of the federal correctional institution at Danbury testified that "I know that many letters have gone out [to the news media]" (App. 204). The report of the New York State Special Commission on Attica graphically documents prisoner fascination with the media:

The admission of newsmen and television cameras to D Yard, not only provided inmates with an unparalleled opportunity to tell the public about prison conditions, but gave them a sense of importance, dignity and power. Inmates realized that they could command national attention only as long as they kept the hostages and that once the uprising ended they would return to the status of forgotten men, subject to all these humiliations of prison life. That feeling, coupled with their fear of reprisals and mistrust of the State, made it almost impossible to persuade them to give up

the limelight and return to anonymity. [App. 300.]<sup>4</sup>

John Boone, Commissioner of the Massachusetts State Department of Corrections, described an incident at the state institution for women at Framingham. A peaceful disturbance was ended by a press conference. "And after they had their statement before the press, they felt very proud of themselves and it was practically over. \* \* \* They liked to see themselves on television. So they tried for some more. But she [the Superintendent] cut it off" (App. 344). Boone attributed this behavior to the fact that the inmates were women, but he was probably being facetious.

The record also shows, however, that the press does not have the same degree of interest in the individual inmate that the inmate has in the press. Benjamin Malcolm, Commissioner for the New York City Department of Corrections, which follows an open access media policy (App. 123-129), testified that requests for interviews have not "been frequent at all" (App. 131), and that there had been no requests to interview sentenced inmates (App. 138). Leroy Anderson, Ex-

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<sup>4</sup> Mr. Edman, General Counsel of the Commission, testified that in his view the press should play a role in prison life through interviews conducted at times other than during an institutional disturbance. He was, however, talking about "private interviews where people are not under the pressure of making speeches to please their fellow-inmates or the institutional administrators" (App. 301). "The press interviews sought here will not be conducted under such conditions, even if the inmate's name is not revealed in the story (App. 185-186, 222, 486). The relevance of Mr. Edman's views to this case are discussed further, *infra*, pp. 52-53.

ective Assistant to the Director of the District of Columbia Department of Corrections, testified that under the interview policy of the Department he knew of only three requests for interviews (App. 147). John Hume of Massachusetts testified that interviews are "not that frequent anyway" (App. 332) and explained, "The press is looking for something too often to sell newspapers" (*ibid.*).

As Warden Alldredge explained, when asked about media interest in famous inmates such as Jimmy Hoffa as opposed to the interest in the average inmate, "Well, naturally, there is a great difference. There is more interest in the person who is well known. And the other, usually the person of interest to news media then would be the person who has been involved in some kind of serious incident in the institution" (App. 180). Indeed, this very litigation began with a request to interview inmates involved in disturbances (App. 4).

Secondly, the theory of the court of appeals overlooks the fact that it is impossible with any precision to predict the behavior of inmates. Thus an inmate upon gaining access to the press may then become a source of difficulty, in part because of the impact of the interview on his and fellow inmates' perception of himself.

As Peter B. Hensinger, Director of Corrections for the State of Illinois, explained in describing Illinois' discretionary policy, "[w]e are in a field that is imprecise at best" (App. 530). Hensinger described an incident under Illinois' discretionary policy where a warden permitted an interview with a member of the



Black Panther Party, a mistake in Hensinger's view because it led to difficulties in the prison (App. 542). "I might not have granted that particular individual an interview with that particular inmate at Vandalia. . . . But it was the judgment of the superintendent at that time that he thought it could be helpful without that. You know, maybe he didn't anticipate the results of the writing" (App. 545).

B. *The granting or denying of interview requests on an individual basis would create serious problems for prison officials and would itself be likely to lead to disruptive situations in the prisons.*

If Bureau of Prisons officials were required to approve or disapprove press interviews with a particular inmate on the basis of its anticipated effect, those decisions would create serious problems in the administration of the prisons.

Since there is no way prison officials can predict with certainty what interviews will cause difficulties, prison officials will have to make a judgment on what the prisoner is likely to say, how the press is likely to treat his statements, and what effect his statements thus treated is likely to have within the prison. It is probable that prison officials' decisions will depend upon their own estimate of how "harmful" or "beneficial" to the prison the particular interview is likely to be. Prisoners known to harbor hostile and critical views about prison conditions are likely to be denied interviews, while prisoners considered sympathetic and friendly to the prison administration will be granted permission. The consequence is likely

to further morale and disciplinary problems in the institution.

The record shows the problems that this approach to interviewing prisoners would cause. Peter B. Hensinger, then the Director of Corrections for the State of Illinois, testified at length (App. 525-572) about the policy he had promulgated, under which the decision whether to grant interviews was made by the "chief administrative officer" of each institution, taking into consideration a number of factors, including "the interests of the institution and Department" (App. 508). Hensinger described two cases which had created problems. In one, an interview was permitted with Bobby Rush, Defense Minister for the Black Panther Party. "That resulted in an inflammatory article which I objected to, which caused considerable tension on the grounds of the institution, and considerable problems with our staff, and had a number of inaccuracies. And as a result of this, we had to transfer him and did, and he was not granted more interviews" (App. 542). The other case, in which an interview was denied, involved an inmate named Kelly Paton (App. 554). This prisoner "had gotten a name for himself, developed a name for himself as leader of certain militant forces and factions, and when received at Menard might have continued to communicate with the general public in the same militant fashion as a result of—and through the course of an interview" (App. 555).

In each instance the result undoubtedly was to create problems with respect to both the particular inmate involved and broader segments of the prison population. Rush probably believed that his transfer

was punishment for what he had said, and other members of the Black Panther Party undoubtedly viewed the transfer as directed against their organization and reflecting hostility toward it by the prison administration. Similarly, Paton and his friends and supporters no doubt believed that the denial of an interview to him was unfair and constituted discriminatory treatment because of the views he espoused.

Incidents related by officials in charge of three different institutions—the federal penitentiary at Terre Haute, the Iowa State Penitentiary, and the Florida system—further indicate the difficulties created by a system under which local prison officials are given discretion to decide whether to permit particular interviews.

Noah L. Alldredge, Warden of the federal penitentiary at Terre Haute (having been transferred from Lewisburg), testified about an incident where he permitted, in his view mistakenly (App. 380), a representative of Congressman Ronald Dellums to interview four prisoners (App. 370-372). Alldredge did not trust the representative because he had earlier been permitted to tour the institution at Lewisburg, but he did not "give my response to the allegations made in any news media after that" (App. 377). Alldredge concluded that he should permit the representative to speak to the prisoners because he was under the auspices of a Congressman (App. 380).

The interviews led to stories in the press, and the stories led to disturbances at the prison. The first story read in part as follows:

An independent committee concerned with penal reform said today some of the nation's prisons are hot beds ready to erupt into strikes and possible riots. George J. Mitchie, a former convict and member of the National Coordinating Committee for Justice Under Law said one of the worse was the U.S. penitentiary at Terre Haute, Indiana, and unless somebody steps in and does something there may be another Alton there. Mitchie told a news conference, "that is a real hell hole—shocking, what we run into in these places." He declined to discuss Terre Haute further until the committee hears first from the Bureau of Prisons to which it has sent a report. Mitchie and Frank Calahan, another former convict and committee member have visited prisons and consulted with Mr. Ronald V. Dellums, Democrat of California, and interviewed inmates and administrators. [App 379.]

Warden Alldredge denied the story, and further media coverage followed. Alldredge found the local television coverage of his denial done "quite well" (App. 382). Nevertheless, a work stoppage occurred at the institution (App. 384-385).

The district judge considered this example irrelevant because the Congressman's representative was "known to be irresponsible" and should therefore have been denied access (App. 383).<sup>2</sup> But certainly government officials, either in the executive branch or the courts, should not attempt to decide who is an "irresponsible" journalist, and on that basis deny

<sup>2</sup>The order of the district court does not explicitly permit the Bureau of Prisons to consider the reputation or credentials of the person seeking the interview (1st App. A. 28).

him an interview. The assumption of such governmental discretion would pose First Amendment problems. See *infra*, pp. 48-52.

Leon V. Brewer, Warden of the Iowa State Penitentiary, described a situation that had arisen under Iowa's policy of discretionary interviews. After a preventive general lockup in November of 1971 (App. 431-432), the Warden received requests from major Iowa newspapers for interviews with prisoners who had been placed in segregation (App. 432). The Warden denied the interviews (App. 433), but the Governor's office reversed him (App. 433-434). The interviews took place, and they prolonged the difficulties within the prison (App. 436). As Brewer explained: "The inmates who were involved in the interviews, who contradicted our reason for having taken the action, seemed to gain stature with their peers; and much conversation then ensued around the institution, it was a heightening of tension among both inmates and staff \* \* \* (ibid.)."

The district judge also considered this example irrelevant: "[W]hat has this got to do with the case before me? \* \* \* This gentleman has described what happened when a Governor intervened over the judgment of the penitentiary officials, forcing the breaking of a reasonable rule" (App. 437). Realistically, however, it is not unlikely that if the press is denied such interviews, it will seek—sometimes successfully—to overturn the denial by approaching higher offi-

\* After the incident, Warden Brewer has granted further interviews, but only those of "a human interest nature" (App. 441).

els. Once there is discretionary authority to grant or deny such interviews, there is always the danger the denial of an interview will be reversed by an official who is not as aware of, or as sensitive to, the problems the interview would create as the local prison official who made the decision.

Another similar incident was recounted by Louis L. Wainwright, Director of the Florida Division of Corrections. He received a request from Lew Whitten, an investigative reporter for the Jack Anderson column, to visit the Florida State Penitentiary and interview prisoners (App. 407). Wainwright wanted to deny the request, but his superior, Dr. Bachs, the Secretary of the Florida Department of Health and Rehabilitation, ordered him to permit it (App. 407-408). Whitten spent three days at the institution, and a column appeared (App. 408). The column dealt generally with prison conditions as well as making specific allegations about the Florida Penitentiary (App. 409-410). Newspapers within the state became interested, and were also permitted access to the prison (App. 411). Serious disciplinary problems resulted "[u]ntil the situation got to be complete chaos and Dr. Bachs decided maybe we ought to revert back to the policy we had through the years" (App. 411-412). Further problems followed, and a serious disturbance erupted in which forty-two people were injured (App. 412).

*C. The federal prison system needs a uniform policy on interviews with inmates.*

Another important justification for the Bureau of Prisons' prohibition against inmate interviews is the

importance of treating all inmates equally. As Director Carlson explained, in a colloquy with the court and counsel (App. 451-452):

The Court: I haven't heard yet—and I wanted to give you the opportunity, because there isn't any evidence being submitted to me—as to the need of a total exclusion \* \* \*.

The Witness: Your Honor, as I have attempted to explain, and apparently have been unsuccessful, I feel if we did permit the press to interview institutions \* \* \* this would then raise the issue in all our other institutions \* \* \*.

Q. \* \* \* Do you feel that there is a need, across the board, in all areas, to treat all inmates incarcerated in your institutions, as far as possible, equally?

A. Very definitely, I feel that is one of the very basic tenets of sound correctional administration.

The record contains the Director's expert judgment that uniformity of treatment of all inmates within both a particular institution and within the entire federal prison system, is important to sound penal administration.

#### 1. A UNIFORM POLICY WITHIN A PARTICULAR INSTITUTION

As explained above, giving prison officials the discretion to grant or deny inmate interviews is likely to lead those officials to deny interviews to inmates whom they believe are hostile to the administration and likely to cause trouble. If, as is likely to be the case, a significant number of the inmates denied interviews for that reason are members of minority groups, they and



their groups probably will believe that they have been subjected to unfair racial or ethnic discrimination. This, in turn, would be likely to lead to severe morale and disciplinary problems within the institution.

Equality of treatment among inmates is a basic tenet of sound penal administration (see *supra*, p. 20). This concept, however, does not cover differences in treatment required by correctional needs, which are essential. As Director Carlson explained: "In terms of the correctional needs of the offender, I would hope that we differentiate based upon the needs of the offender for particular types of correctional treatment. In terms of over-all treatment, in terms of the inmate, what his economic status is, what his socio-economic class may be, what his prior position may be, what his race or religion may be, I hope we do treat them all equal. This is the basic tenet I was referring to" (App. 453).

Members of minority groups who are denied press interviews because of the potential for disruption that such interviews create are unlikely to appreciate the distinction Director Carlson drew. To them, such denials are likely to appear as additional instances of unfair treatment by the prison authorities, and to exacerbate any existing hostile feelings they have toward the prison and its administration.

## 2. A UNIFORM POLICY WITHIN THE FEDERAL PRISON SYSTEM

Director Carlson, although recognizing that there were some institutions within the federal prison system where interviews would not be a problem (App.

217), nevertheless concluded that a uniform policy is necessary:

Because of the fact that we have inmates that are transferred from one institution to another, from Lewisburg to Danbury, from Danbury to McNeil Island, in Washington. We have a great deal of transfer of inmates because of geographic residence. We have inmates that go out and back into a different institution on new Federal offenses or related to a parole violation. We thought we had to have a policy that would be applicable at Lewisburg as well as at LaTuna, Texas. We couldn't differentiate because the inmate happened to be at a different institution at a particular time. [App. 213.]

'The Bureau of Prisons' concern here is in part the same as that which requires a uniform policy within an institution. The inmates view the entire federal prison system as one and they know about any differing policies at other institutions within the system. Thus inmates at a maximum security institution, where interviews would either generally or always be denied, will feel discriminated against. The situation would become particularly acute where prisoners are transferred from less to more stringent institutions, where inmate press interviews are less likely to be permitted; the unavailability of such access to the media would further increase the transferred prisoners' anger and

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The district court stated, in a colloquy with Thoseter (counsel), that "You wouldn't be required [under the order] to permit any interviews in maximum security institutions" (App. 484). In *Seattle-Tacoma News Herald*, Local 4983 v. Parker, 480 P. 2d 1086, the Ninth Circuit specifically upheld the Bureau's interview ban as it applied to McNeil Island federal penitentiary, a "maximum security" facility.

hostility and make them more difficult to handle in the new institution.

Finally, there is the serious problem of supervising a discretionary policy in the far flung federal prison system. As indicated above, *supra*, pp. 23-24, supervising such a policy is difficult. The line between denial of an interview made in good faith to prevent "trouble" and one made in bad faith to prevent unfavorable publicity or disclosure of improper practices is thin indeed. Under whatever standards and policies the Bureau of Prisons may establish to guide its personnel, it would be a difficult, complex, and time-consuming task to insure that those standards and policies are being properly administered.

Peter H. Hensinger, who had adopted a policy of discretionary interviews within his state system and who considered it desirable, recognized that the different structure of the federal prison system would justify a uniform policy. "I think [a discretionary policy] \* \* \* would be less successfully implemented. I think in the Federal Bureau of Prisons, where you have 32 different institutions, you would have some problems. You have got inmates that are going to be assigned from one institution to another, who might have a practice at one location and not the same practice in another, and you have got distances in the Federal Bureau of Prisons that we don't have, of 3,000 miles rather than a couple of hundred miles" (App. 554).

# THE BUREAU OF PRISONS' REFUSAL TO PERMIT INMATE PRESS INTERVIEWS IS CONSTITUTIONAL.

*A. The Director of the Bureau of Prisons acted within his discretion in concluding that sound penal administration requires the denial of inmate press interview*

1. THE DIRECTOR HAS BROAD DISCRETION IN OPERATING THE PRISON SYSTEM AND THE COURTS EXERCISE ONLY LIMITED REVIEW OF HIS ACTIONS

The formulation of the public information policy of the Bureau of Prisons is a matter within the authority of that Bureau. The control and management of federal prisons has been vested by Congress in the Attorney General of the United States, and he has the authority to promulgate rules covering the activities of federal prisoners and to "provide for their proper government, discipline, treatment, care, rehabilitation, and reformation," 18 U.S.C. 4001. Under the direction of the Attorney General, the Bureau of Prisons has charge of the "management and regulation" of all federal prisons and has the duty to:

Provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States [18 U.S.C. 4002.]

Courts have long respected both the broad authority of the Bureau of Prisons and the expertise it has gained from its long experience in administering the federal prisons. Thus, courts have recognized that "[t]he responsibility for the supervision of \* \* \* [fed-

eral penal] institutions and the inmates is placed upon the Attorney General. Courts have uniformly held that supervision of inmates of federal institutions rests with the proper administrative authorities and that courts have no power to supervise the management and disciplinary rules of such institutions." *Nutton v. Nettle*, 302 F.2d 280, 288 (C.A. 8), certiorari denied, 372 U.S. 930. See also (state institutions), *Cruz v. Beto*, 405 U.S. 319, 321; *Nostre v. McElinnis*, 334 F.2d 900, 911-912 (C.A. 2), certiorari denied, 379 U.S. 892 (it is not "the business of the Federal Courts to work out a set of rules and regulations" to govern prison conditions) *Nostre v. McElinnis*, 442 F.2d 178, 190 (C.A. 2) (*en banc*), certiorari denied *sub nom. Oswald v. Nostre*, 405 U.S. 978. Matters relating to the internal operation of the prison system are committed to the discretion of the prison officials, and court review of their actions necessarily is extremely limited. The formulation of proper public information standards and procedures is one of those functions where the courts should largely defer to the expertise of prison administrators.

Bureau of Prisons Policy Statement No. 1220.1A, described in Part I, is a regulation governing the management of the federal prisons, and, as such, it is well within the authority of the Bureau under 18 U.S.C. 4001 and 4042. This policy, regulating press access to prisons, represents an attempt by the Bureau to allow the press to gather information about federal prisons without endangering the security of these institutions or hampering the rehabilitation process. "The purpose [of this policy statement] is to protect First Amend-

ment rights of inmates, within the constraints of sound institutional management" (§ 1, Pet. App. D, 40). As the Ninth Circuit concluded in upholding the Bureau's policy against constitutional attack, "the interview ban is reasonable action within the scope of the wide discretion of the prison administrators \* \* \*," *Seattle-Tacoma Newspaper Guild, Local #89 v. Parker*, 480 F. 2d 1002, 1006.

The broad discretion of the Attorney General in operating the federal prison system under this statutory authority is comparable to his wide authority to exercise the plenary congressional power to exclude aliens, which this Court repeatedly has recognized, most recently in *Kleindienst v. Mandel*, 408 U.S. 753. In *Mandel*, the Court declined to look behind the Attorney General's "exercise of that discretion" to exclude an alien for a "facially legitimate and bona fide reason" (408 U.S. at 770) even though the exclusion interfered with the desire of American citizens to communicate in person with him. Similarly, in the present case, where the Director of the Bureau of Prisons has given a "facially legitimate and bona fide reason" for prohibiting inmate press interviews, the courts themselves should not attempt to determine the wisdom or suitability of that judgment.

1. THE DIRECTOR DID NOT ABUSE HIS DISCRETION IN BANNING INMATE PRESS INTERVIEWS

B. Permitting such interviews would cause serious problems in the prison system.—We have explained in Part I, *supra*, the reasons that led the Director of the Bureau of Prisons to conclude, after considering alternative proposals, that an outright prohibition upon

press interviews with federal prison inmates was necessary for the proper administration of the federal prison system. In evaluating that justification, however, it is necessary to take account of two additional considerations which further support the Director's decision: that the press has alternative means of obtaining information about prisoners and prison conditions, and that the denial of interviews with inmates does not discriminate against the press.

b. *The press has alternative means of obtaining necessary information about prisoners and prison conditions.*—Although Bureau of Prisons Policy Statement No. 1220.1A does not permit the press to interview individual inmates, it does provide the press with full opportunity to learn about prison conditions and prisoner grievances. Under the Policy Statement, press representatives may visit, inspect, and photograph federal prisons (§§ 4b(5), 4b(7)); inmates are permitted directly to inform press representatives of prison conditions and prisoner grievances through sealed, uninspected mail written and promptly delivered to any press representative (§4b(1)); press representatives are permitted to initiate correspondence with inmates of their choosing or to engage in a written dialogue by following up a mail received from inmates by writing to particular inmates in letters which are inspected only for contraband or matters inciting illegal action (§ 4b(7)); and prison officials are required to "give all possible assistance" to press representatives "in providing background and a specific report" on inmate complaints (§ 4b(12)).

In addition, Bureau regulations permit inmates to bring prison conditions and inmate grievances to pub



be attention through sealed, uninspected mail sent to attorneys, judges, Congressmen, the Director of the Bureau of Prisons, the Board of Parole, and other executive officers; inmates may receive letters from attorneys which are inspected solely for contraband; public officials having supervisory functions with respect to federal prisons, including judges and congressmen, are permitted to interview individual inmates; and inmates may receive visits from members of their immediate family, other relatives, friends, associates, and special visitors such as clergymen, former or prospective employers, sponsors, and parole advisors.

Moreover, since the inmate population of the Bureau of Prisons is constantly turning over, paroled and released inmates with recent prison experience are always available to the press.<sup>2</sup> Finally, employees of the Bureau of Prisons are available to the press, and the actions of the Bureau of Prisons are subject to review in congressional budget and oversight hearings. The policies and operations of the Bureau of Prisons and its institutions are not immune from press scrutiny or public view.<sup>3</sup>

<sup>2</sup> We are informed by the Bureau of Prisons that approximately one-half of the prison population on any one day will be released within the following 12 months. The average population is 23,000, of whom approximately 12,000 are released each year.

<sup>3</sup> In the *amicus* brief filed in the companion case of *Pell v. Procunier*, No. 73-918, respondents argue that:

"[The] democratic process has not been at work in the prison context because prison officials customarily have denied the press an opportunity to present to the public a full picture of prison life, including the views of inmates obtained through in-depth interviews. Only when prison authorities remove the dam they have erected to stop the free flow of information to

Although respondents allege that there was "a virtual blackout of news about events and conditions" at Lewisburg and Danbury federal penitentiaries (App. 5), the record shows that respondent Bagdikian was able to obtain extensive information about conditions in those institutions by using the procedures discussed above. He testified that he learned of the work stoppages at Lewisburg and Danbury, and of claims of mistreatment of inmates, through correspondence from inmates,<sup>12</sup> correspondence from attorneys representing inmates, "sources on Capitol Hill," and other sources such as former inmates (App. 88-89, 95). Although Bagdikian was not permitted to follow up these reports through the particular technique he desired—the confidential interview—the record shows that at both Lewisburg and Danbury the wardens "welcomed" him; invited him to "walk

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the public, will the tides of prisoner grievances be channelled away from the courts, and perhaps from outbreaks of violence, and into the political process where they belong. Thus this case presents an important opportunity for this Court to help activate the political process on issues of penal reform by removing an artificial and arbitrary barrier to an informed citizenry." [Brief of the *Amiel Curcio* Washington Post Company, et al. p. 14.]

The record in this case shows that the supposed "ban" is imaginary.

<sup>12</sup> Warden Alldredge of Lewisburg testified that copies of the Bureau's Policy Statement approving inmate correspondence to the press were "placed in each quarters"; that inmate mail to the news media is "placed in a Government franked envelope" without being "read or inspected in any way"; that an inmate may "obtain the assistance of a fellow inmate in composing a letter to the news media"; and that after the revised Policy Statement went into effect, there was a "significant amount of such correspondence" (App. 180-181, 183). Warden Norton of Danbury testified similarly (App. 201-203, 204).

around and inspect the prisons," including the punitive segregation unit; and informed him that he could converse briefly with inmates he might encounter (App. 90-91, 93, 105-109, 111-114, 116-117). Bagdikian testified that he did, in fact, meet with a group of randomly selected inmates at Lewisburg during which he discussed the strike (App. 91-92, 115). These inmates, he stated, "gave their impressions and some individual experiences" (App. 115). Bagdikian also testified that he did "tour, walk through the institution" at Danbury "and did stop a prisoner at random, I did in fact talk about the strike; and they did not stop me" (App. 113).

In sum, although the Bureau does not permit the press to interview individual inmates chosen by the press directly, it does provide extensive alternative methods for communication between the press and prisoners that enable the press to obtain detailed and comprehensive information about conditions inside the prisons.<sup>22</sup> The Bureau of Prisons has not attempted to cut off the flow of information from inside the prisons to the press, but to the contrary has endeavored to provide the maximum flow that in its expert judgment is consistent with the minimum needs of sound prison administration.

*e. The denial of interviews with inmates does not discriminate against the press.*—The court of appeals stated (Supp. Pet. App. F, 6):

The Bureau's policy governing press interviews differs significantly from that controlling

<sup>22</sup> In *Seattle-Tacoma Newspaper Guild, Local 494 v. Parker*, *supra*, the Ninth Circuit emphasized the existence of this "extensive access" in upholding the Bureau's policy. 480 F. 2d at 1067.

the visitation rights of other persons. In general, inmates' families, their attorneys, and religious counsel are accorded liberal visitation privileges. Even friends of inmates are allowed to visit, although their privileges appear to be somewhat more limited. The testimony suggests that the federal institutions follow a rather liberal policy of granting visitation privileges whenever possible.

The court concluded that because friends, relatives, clergy and lawyers are allowed to visit, and reporters are not, there is discrimination against the press (Supp. Pet. App. P. 11):

Restrictions that single out members of the news media and limit their access more grudgingly than the right granted the public at large should be examined with care and upheld only where the differential treatment is in response to an identified evil associated with press attendance.

The inquiry in the present case does not end with the Government's assertion of the truth that prisons are institutions where public access is generally limited. Appellees do not seek *carte blanche* rights freely to enter federal institutions whenever they wish and to converse with any person of their choosing. Rather, they say that they should be afforded essentially the same limited rights granted the public generally—the right on occasion to enter and engage in private interviews with consenting inmates.

The "public generally," however, has no right to "enter and engage in private interviews with consent-

ing inmates." Members of the press, like the public generally, may visit the prison to see friends there. What they seek is not the right to talk to friends, but to talk to any inmate for purely professional reasons. In terms of corrections policy, an inmate's family, friends and religious counsel facilitate the rehabilitation process by giving the inmate emotional support and by "motivating him toward positive aspirations" (Bureau of Prisons Policy Statement No. 72004A). An inmate's lawyer must have access to the inmate in order to consult with him. The press serves neither of these functions. Instead of facilitating the rehabilitation process, the Bureau of Prisons believes, as has been discussed at length in Part I, that personal press interviews may impede it."

Not only does the Bureau of Prisons not discriminate against the press, it accords the press a preferred position. The press is one of the few recipients of uncensored mail from prisoners. The press is one of the few groups entitled under Bureau of Prisons policy to visit prison facilities. Respondents seek not equality of treatment, but a further extension of the special privileges they already have.

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"Plaintiff submitted a proposed finding of fact to the district court that such interviews "are not likely to be a significant factor in the development of disturbances in federal penal institutions" (Plaintiff's Proposed Finding 46; Pet. App. E, 64-65). The district court did not accept that finding (Pet. App. B, 36).

**5. THE DENIAL OF INMATE PRESS INTERVIEWS DOES NOT VIOLATE THE FIRST AMENDMENT**

- 1. Government action does not violate the First Amendment merely because it does not facilitate the press's performance of its functions to the maximum extent*

The decisions of this Court teach that otherwise valid government action is not invalidated merely because it makes more difficult either the obtaining of information by the public or the performance by the press of its functions. In *Zemel v. Rusk*, 381 U.S. 1, suit was brought to compel the Secretary of State to validate a passport for travel to Cuba. Plaintiff claimed that the purpose of his proposed trip was "to satisfy my curiosity about the state of affairs in Cuba and to make me a better informed citizen." 381 U.S. at 4. He argued, *inter alia*, that the Secretary's refusal to validate his passport violated his First Amendment right to information about the Government's policy toward Cuba. The Court rejected this argument and held that no such First Amendment right was involved. Speaking through Chief Justice Warren, the Court said:

We must agree that the Secretary's refusal to validate passports for Cuba renders less than wholly free the flow of information concerning that country. While we further agree that this is a factor to be considered in determining whether appellant has been denied due process of law, we cannot accept the contention of appellant that it is a First Amendment right which is involved. For to the extent that the

Secretary's refusal to validate passports for Cuba acts as an inhibition (and it would be unrealistic to assume that it does not), it is an inhibition of action. There are few restrictions on action which would not be clothed by ingenious argument in the garb of decreased data flow. For example, the prohibition of unauthorized entry into the White House diminishes the citizen's opportunities to gather information he might find relevant to his opinion of the way the country is being run, but that does not make entry into the White House a First Amendment right. *The right to speak and publish does not carry with it the unrestrained right to gather information.* [381 U.S. at 16-17, emphasis added, footnote omitted.]

In *Branzburg v. Hayes*, 408 U.S. 665, the Court reaffirmed *Zemel* and further explored its constitutional implications and dimensions. In *Branzburg* newsmen claimed exemption, under the First Amendment, from the obligation to respond to grand jury subpoenas. They asserted that compelled grand jury testimony would constitute a "burden" on news gathering, since if reporters were "forced to respond to subpoenas and identify their sources or disclose other confidences, their informants will refuse or be reluctant to furnish newsworthy information in the future." 408 U.S. at 682. Put another way, the newsmen contended that "the flow of news will be diminished by compelling reporters to aid the grand jury in a criminal investigation." 408 U.S. at 683.

While agreeing that "news gathering is not without its First Amendment protections" because "with-



out some protection for seeking out the news, freedom of the press could be eviscerated." 408 U.S., at 76. 681, the Court held that the First Amendment was not "abridged" by the requirement that members of the press respond to grand jury subpoenas. One of the bases for this holding was the Court's conclusion that "the evidence fails to demonstrate that there would be a significant constriction of the flow of news to the public if this Court reaffirms the prior common law and constitutional rule regarding the testimonial obligations of newsmen." 408 U.S., at 683.

The Court in *Honigsberg* thus recognized that legitimate government policy which may not provide the press with optimum conditions for performing its news gathering efforts does not on that account "abridge" the "freedom of the press." As the Court in *Honigsberg* noted:

Despite the fact that news gathering may be hampered, the press is regularly excluded from grand jury proceedings, our own conferences, the meetings of other official bodies gathered in executive session, and the meetings of private organizations. Newsmen have no constitutional right of access to the scenes of crime or disaster when the general public is excluded, and they may be prohibited from attending or publishing information about trials if such restrictions are necessary to assure a defendant's fair trial before an impartial tribunal. (408 U.S., at 684-685.)

Limitations upon the right of access of the new media to judicial proceedings have long been accepted even though such limitations may make it more diffi-

call for the media to obtain and distribute to the public the fullest information about such proceedings. For example, there is little doubt that full television coverage of an important trial would give the public a more graphic, more accurate, and more complete idea of what happens than a more written or verbal description of the events. But because of the threats that such coverage poses to a fair trial, ordinarily television coverage of such proceedings is not permitted. See *Kales v. Tessa*, 381 U.S. 312. Similarly, photography ordinarily is not permitted in American courts, yet photographs of the participants in the courtroom and of dramatic moments in the trial would enable the press to give a much better picture of the trial and its atmosphere than a written description, no matter how well done. We trust, however, that respondents will not seriously contend that such limitations upon the ability to photograph or televise the actual proceedings violate First Amendment rights.

Respondents are not seeking to gather news on "streets, sidewalks, parks, and other similar places" \* \* \* so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely." *Food Employees v. Logan Plaza*, 321 U.S. 304, 315. Rather,

"Indeed, in recent years the practice has developed of permitting artists to attend the courtroom proceedings and to draw sketches of the participants and of dramatic moments in the trial, and thus to give the public some pictorial representation of what transpired.

respondents seek to gather news in Federal prisons, which "traditionally" are not "open to the public," *Adderley v. Florida*, 385 U.S. 39, 41. In such a case, "where property is not ordinarily open to the public" \* \* \* access to it for the purpose of exercising First Amendment rights may be denied altogether." *Food Employees v. Logan Plaza*, *supra*, 30 U.S. at 320. As Mr. Justice Black stated in *Cox v. Louisiana*, 379 U.S. 559, 578, the First Amendment bars restrictions on "speech, press, and assembly where people have a right to be for such purposes" (emphasis in original). The press, we submit, has no absolute constitutional right to be in the prisons merely because it believes that such presence will aid it in its news-gathering function.

2. The denial of press interviews with inmates does not unconstitutionally abridge the freedom of the press.

Unlike many of the cases in which this Court has considered broad issues involving the right of the press to publish and circulate free from government control,<sup>1</sup> the constitutional issue here is much narrower. There is no claim that the Bureau of Prisons has attempted in any way to prevent respondents or

<sup>1</sup> E.g., *New York Times Co. v. United States*, 403 U.S. 713 (injunction against publication); *Time, Inc. v. Hill*, 385 U.S. 37 (penalty on publication in form of damage award); *Garrison v. Louisiana*, 379 U.S. 64 (criminal libel); *New York Times Co. v. Sullivan*, 376 U.S. 254 (libel); *Grosjean v. American Press Co.*, 297 U.S. 243 (tax on circulation); *Near v. Minnesota*, 293 U.S. 697 (injunction against publication).

other members of the press from freely publishing or circulating any reports concerning prison conditions and prisoner complaints. The question here is whether the First Amendment gives the press the right to use a particular technique of news gathering—the confidential personal interview—inside the walls of federal prisons.<sup>14</sup>

We submit that, in view of the stated justifications for the Bureau of Prisons' refusal to permit such interviews and the fact that numerous other sources of information about the federal prison system are available, the press does not have that right.

The First Amendment is one of the vital bulwarks of our national commitment to intelligent self-govern-

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<sup>14</sup> The issue of the First Amendment right of intrusion is not present in this case but is present in the consolidated case of *Pennsler v. Hillery*, No. 73-754. It has long been recognized that: "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a restriction justified by the considerations underlying our penal system." *Piper v. Johnston*, 354 U.S. 205, 207. See also *Rostre v. McIlwain*, 442 F.2d 174, 199-200 (C.A. 2), certiorari denied sub nom. *David v. Rostre*, 365 U.S. 978; *McDonough v. Director of Prisoners*, 429 F.2d 1189, 1193 (C.A. 4). Thus the issue in the instant case is the same as the issue here: do the "considerations underlying our penal system" support a prohibition of personal interviews. Whether the "right" in issue here originates, as a conceptual matter, with the press or the inmate, the practical answer must be that the prohibition can be no greater in the one case than the other. Relevant is the observation that although "[t]he Attorney General and other officers in the line of authority over penal institutions do not have the power arbitrarily to deny a prisoner communication with the outside world, \* \* \* they do have wide powers of control over such communication." *Dalyan v. McGinnery*, 201 F.2d 711, 712 (C.A.D.C.).

ment, *See New York Times Co. v. Sullivan*, 376 U.S. 254, 269-270; Brennan, *The Supreme Court and the Meiklejohn Interpretation of the First Amendment*, 79 Harv. L. Rev. 1 (1965). Inherent in the policies of the First Amendment is "the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences" \* \* \* *Red Lion Broadcasting Co. v. Federal Communications Commission*, 355 U.S. 367, 380. The press, by seeking and reporting news, plays a crucial role in the fulfillment of this right of the public to information about the affairs of state, since no individual has the time or the resources to gather all the information necessary to form intelligent opinions concerning the functioning of government.

The First Amendment protects and maintains the freedom of the press by preventing government interference ("Congress shall make no law \* \* \*"); it bars government interference with publication in order "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail \* \* \*." *Red Lion, supra*, 355 U.S. at 380. The First Amendment, however, is not defined by the convenience of the press. It does not obligate the government affirmatively to assist the press to improve its news gathering or news distribution techniques and methods or to increase the volume or quality of the information it furnishes to the public.

If the First Amendment is construed to give "the press" a right to interview prisoners, there will be serious and difficult questions of interpretation and

application. The "press" today is not a clearly defined identifiable group, but a vague and broad concept. In addition to working journalists, radio and television reporters and commentators and recognized magazine authors and writers of books who work full time at the profession, there are many individuals who occasionally write and publish articles or books, but who are not customarily thought of as members of the "press."

For example, a professor of sociology doing research for a book or article on prison conditions which he hopes to publish may wish, as part of his research, to interview prisoners. Similarly, a practicing lawyer who publishes an occasional article may seek the same privilege. Perhaps a "reporter" for an "underground" newspaper or magazine, who does not have the usual press accreditation, wishes to interview prisoners in the hope of obtaining some sensational charges and claims that could form the basis for an article for his publication.

It is clear from the record that granting confidential prisoner interviews to every person with a plausible claim of an intent to write, or perhaps even to give a public address, would create an intolerable situation for the federal prison system. The court of appeals' decision, therefore, would require the Bureau of Prisons, and ultimately the federal judiciary, to determine which prospective writers and speakers have First Amendment rights of access and which do not. That is a path so fraught with constitutional dangers that the law ought not to enter upon it.

This Court adverted to the problem when, in re-

jecting a claim that newsmen should be given a special privilege against compulsory testimonial disclosure, it stated in *Hranzburg v. Hayes*, *supra* (408 U.S. at 703-704):

We are unwilling to embark the judiciary on a long and difficult journey to such an uncertain destination. The administration of a constitutional newsmen's privilege would present practical and conceptual difficulties of a high order. Sooner or later, it would be necessary to define those categories of newsmen who qualified for the privilege, a questionable procedure in light of the traditional doctrine that liberty of the press is the right of the lonely pamphleteer who uses carbon paper or a mimeograph just as much as of the large metropolitan publisher who utilizes the latest photocomposition methods.

Thus, the consequences of recognizing a First Amendment right of the "press" to interview prisoners could be a much broader and more serious interference with the proper operation of the federal prison system than seems likely to result from permitting the *Washington Post* and one of its reporters to conduct the interviews they are here seeking.<sup>18</sup> It would also involve the courts on an ever-increasing scale in de-

<sup>18</sup> The Bureau of Prisons in its Policy Statement has stated that it will permit uncensored mail communication with prisoners by "a newspaper entitled to second class mailing privileges; a magazine or periodical of general distribution; a national or international news service; a radio or television network or station" (Policy Statement No. 1920, 1A, § 4a, 101 App. A, 351). This, of course, is an objective standard, which does not require Bureau of Prison officials to make subjective judgments whether a particular individual is a member of the "press" or, indeed, whether communication with a particular prisoner would have an adverse effect within the prison.



termining the rights of the press to interview prisoners.<sup>12</sup>

The scope of the written media is not the only problem. Movie and television "journalists" can make a similar claim. Surely if an interview is the most effective technique for the written journalist, the television camera at the interview is the most effective technique for the television journalist. The record shows that some prison administrators have admitted television cameras to their institutions, without, in their opinion, ill effect (New York City: App. 128-129; Massachusetts: App. 140). Does this mean that the television cameraman has now acquired a constitutional right of access?

<sup>12</sup>Cf. *McMillan v. Carlson*, C.A. 1, No. 74-1024, decided March 20, 1974. In that case "a recognized author" with "a contract with an established publisher to write a biography of James Earl Ray, the convicted assassin of Martin Luther King," sought to interview Ray's brother, who was a prisoner in a federal penitentiary. McMillan conducted correspondence with him, but the district court "on adequate evidence" found that "plaintiff has a reasonable belief that this is inadequate and that a personal interview would be more productive" (slip op. 1-2). The Bureau of Prisons refused the interview. In holding that the district court decision that "denying access in this case would be unnecessary and unreasonable" is "supportable," the court stated (slip op. 2-3): "Assuming, as we do, that if any access is ever to be permitted, the hard case of allowed access would include a previously established author, under contract with a reputable publisher, wishing to interview a commenting prisoner who reasonably may be expected to contribute information on a subject of widespread interest, we hold that this case is within that case." This holding presumably means that the court is prepared to judge degrees of professionalism in assigning First Amendment rights to persons claiming to be members of the press.

Any approach which requires that the virtues of each particular journalistic technique be ~~balanced~~ against the reasons for limiting its use presents a further serious difficulty. Such an approach forces the courts to decide what journalistic techniques are "good" and what techniques are "bad," in itself a government determination of how the press should pursue its objectives."

Critical to the decision of the court of appeals was its conclusion that interviews are "essential to effective news reporting in the prison environment" (Supp. Pet. App. 16, 14). But Arthur Laman, General Counsel of the New York State Special Commission on Attles, testified on the basis of 1000 inmate interviews conducted by the Commission that *private* interviews with inmates are necessary to get the truth, and other portions of the record make it clear that the press interviews sought here will not be private (App. 185-186, 222, 436). Laman was the only witness who had actual experience conducting private interviews with inmates. "I should add that the basic problem in conducting interviews at a prison is that it is a society in which inmates face sanctions and rewards not just from the administration but from other inmates; and that when an inmate sees you in private, he will tell you things about the administration that may not only be unfavorable but may in many cases be favorable. \* \* \* [He then continues

"The ban of the Bureau of Prisons is based only on considerations of penal administration and does not reflect any effort by the Bureau of Prisons to determine how journalists can most effectively perform their function.

with other examples of the differences in public and private statements.] (App. 291-293).

The district court (1st. App. 13, 30) and the court of appeals (8supp. 1st. App. 16, 14, n. 13) relied heavily on this testimony in concluding that there was an essential need for press interviews. The Commission interviews, however, were conducted in privacy; indeed the total of 1000 interviews virtually guaranteed anonymity. The record shows that press interviews, on the other hand, will, in terms of the life of the institution, be public interviews even if the inmate is not named (App. 185-186, 222, 436). (Respondents here, of course, claim the right to name the interviewee, Complaint Prayer for Relief, Par. 3, App. 7). ~~Linman's~~ testimony thus indicates that the interviews the respondents seek to conduct are likely to result in misleading rather than accurate reports. It illustrates the inadvisability of the courts becoming entangled in the process of deciding how much "weight" or "value" should be put on a particular journalistic technique in order to "balance" it against a particular justification.

This Court referred to a similar problem when considering the claim of privilege advanced in *Bransburg*.

In each instance where a reporter is subpoenaed to testify, the court would also be embroiled in preliminary factual and legal determinations with respect to whether the proper predicate had been laid for the reporter's appearance: Is there probable cause to believe a crime has been committed? Is it likely that the reporter has useful information gained in confidence? Could the grand jury obtain the in-

formation elsewhere? Is the official interest sufficient to outweigh the claimed privilege?

Thus, in the end, by considering whether enforcement of a particular law served a "compelling" governmental interest, the courts would be inextricably involved in distinguishing between the value of enforcing different criminal laws. By requiring testimony from a reporter in investigations involving some crimes but not in others, they would be making a value judgment that a legislature had declined to make, since in each case the criminal law involved would represent a considered legislative judgment, not constitutionally suspect, of what conduct is liable to criminal prosecution. [408 U.S. at 705-706.]

Similarly, here, every journalist is entitled to pursue those journalistic techniques he finds useful (without regard to whether his view is shared by his peers). The courts should not become involved in giving constitutional sanction to those techniques considered essential only by the established members of the profession.

To recapitulate: The Director of the Bureau of Prisons had a reasonable, indeed, a compelling, basis for his conclusion that permitting individual inmate interviews would have a seriously adverse effect upon prison operations. The procedures the Bureau has adopted, which permit extensive uncensored communication between the press and prisoners, are considering all the circumstances, consistent with the First Amendment rights of the press. The latter, we sub-

mit, does not have any constitutional right to conduct face-to-face interviews with individual prisoners.

The rule the district court and the court of appeals have announced, under which prison officials and the courts would be required to decide a host of difficult factual and constitutional issues in considering each interview request, would improperly require that a problem best left to the flexibility inherent in informed administrative discretion be addressed only within the framework of constitutional adjudication. As this Court observed in the context of the congressional scheme regulating access to the airwaves, "courts should not freeze this necessarily dynamic process into a constitutional holding." *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 132.

#### CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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APRIL 1974.



IN THE  
Supreme Court of the United States  
October Term, 1978

No. 73-1205

WILLIAM B. BAKER, Attorney General of the United  
States, and NORMAN A. GARSON, Director, United  
States Bureau of Prisons, Petitioners

v.

THE WASHINGTON POST CO. and BEN H. BACHMAN,  
Respondents

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1973

No. 73-1205

WILLIAM B. HANCO, Attorney General of the United States, and NORMAN A. CARLSON, Director, United States Bureau of Prisons, *Petitioners*

v.

THE WASHINGTON POST CO. and BEN H. BACHURIAN,  
*Respondents*

**BRIEF FOR THE RESPONDENTS**

**OPINIONS BELOW**

The Court of Appeals' opinion of February 21, 1974 is unreported, but appears at Supp. Pet. 8-28.<sup>1</sup> The District Court's opinions of April 6, 1973 and December 10, 1972 are reported at 357 F. Supp. 770 and 779, and appear at Pet. 13-24 and Pet. 29-36.<sup>2</sup> The Court of Appeals' order of September 6, 1973 is reported at 477 F.2d 1104, and appears at Pet. 37-39.

<sup>1</sup>"Supp. Pet." refers to the Supplemental Petition for Certiorari.

<sup>2</sup>"Pet." refers to the Petition for Certiorari.



## JURISDICTION

The petition for writ of certiorari before final judgment was filed on February 15, 1974. The judgment of the Court of Appeals was entered on February 21, 1974. Supp. Pet. 3-28. A supplemental petition for writ of certiorari was filed on February 23, 1974. Certiorari was granted on March 4, 1974. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND POLICY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

United States Bureau of Prisons Policy Statement No. 1220.1A (Feb. 11, 1972) provides in pertinent part:

"(6) Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities.

"(8) Press representatives may visit schools or business establishments which employ offenders in community programs, if the permission of the school or employer is obtained in advance. The rules outlined in paragraph . . . (6) . . . shall apply equally in the community situation."

\* Policy Statement No. 1220.1A is reprinted in its entirety at Pet. 28-29.

## QUESTION PRESENTED

Whether, under the First Amendment, the United States Bureau of Prisons may prohibit all interviews between any member of the press and any individual prison inmate, at all institutions subject to its control, under all circumstances, and at all times.

## STATEMENT

### I. THE PARTIES

Respondent, The Washington Post Company publishes *The Washington Post*, a daily newspaper of general circulation. Respondent Ben H. Bagdikian at the relevant time was Assistant Managing Editor of *The Washington Post*, with more than thirty years of experience as a journalist. App. 85-86.<sup>1</sup> He has had extensive experience reporting on prisons, and from September, 1971 to January, 1972 published a special series of articles in *The Washington Post* on local, state and federal correctional facilities. App. 9-47. These articles demonstrate the seriousness and scope of respondents' interest in reporting on prisons. They were the product of Mr. Bagdikian's visits to numerous prisons and other correctional facilities, and of his personal interviews with numerous inmates. In Pennsylvania, state correctional officials permitted him to be incarcerated in a state prison for a week, without his identity being known to the warden, other staff members, or the prisoners. App. 86-87.

Petitioner William Nishe is the Attorney General of the United States. Petitioner Norman Carlson is the Director of the United States Bureau of Prisons, and as such administers a correctional system embracing (as of 1972) 28 institutions, 14 halfway houses, and 21,500 inmates. App. 200, 212.

<sup>1</sup>"App." refers to the Appendix filed in this Court.

## II. THE CIRCUMSTANCES OF THIS CASE

In mid-February, 1972, peaceful inmate work stoppages took place at the federal prison facilities at Lewisburg, Pennsylvania and Danbury, Connecticut. Lewisburg is a medium security penitentiary, App. 174. Danbury is a correctional facility for intermediate-term inmates, App. 197. Respondent Bagdikian learned of these events from various sources and subsequently received reports that inmates who had served on negotiating committees during the stoppages had been subjected to reprisals by prison authorities, App. 88-89. He was invited by members of the negotiating committees and by other inmates to interview them, App. 95-96, 61.

Satisfied that the work stoppages and their aftermath were newsworthy events,<sup>6</sup> Mr. Bagdikian called the United States Bureau of Prisons on March 1, 1972 for permission to visit Lewisburg and Danbury and to interview members of the inmate negotiating committees and other inmates who had written to him with complaints. He wished to ascertain how the work stoppages had been resolved without violence, the role played by elected inmate negotiating committees in reaching a peaceful settlement, and whether the inmate leaders had been punished despite promises of no reprisals, App. 89, 92, 94-95, 110.

<sup>6</sup> See App. pp. 94-95. Mr. Bagdikian's news judgment was supported by the Executive Editor of *The Washington Post*, Benjamin Bradlee, and the Managing Editor, Howard Simons. App. 90. Respondents' news coverage of the work stoppages appears at App. 66-67. A letter of inquiry from Senator Sam Mervin concerning the opportunity for press coverage of the stoppages appears at App. 64-65.

A Bureau official told Mr. Bagdikian that existing regulations did not permit press interviews with inmates. Mr. Bagdikian repeated his request in a letter to Director Carlson dated and delivered March 9, 1972. On the same day, Mr. Carlson formally denied the request in a letter stating that "the Bureau of Prisons' policy does not permit press interviews with inmates." App. 80-00, 85-00. Neither in that letter nor at any other time has the Bureau contended that any emergency or other special conditions prevailed at Lewisburg or Danbury at the time Mr. Bagdikian requested permission to interview. Nor has the Bureau at any time contended that the particular inmates Mr. Bagdikian sought to interview were "big wheels" or disciplinary problems or in any other way presented particular difficulties to prison authorities. Thus, this case does not raise any question as to the power of prison officials to deny press interviews during periods of institutional emergency or other special conditions. It also does not present any issue as to the power of prison officials to deny press interviews with inmates whose past behavior shows that press interviews with them would present a serious risk of immediate administrative or disciplinary problems in the prison. The sole basis for the denial of the requested interviews in this case was the Bureau's across-the-board prohibition of such interviews.

### **III. THE BUREAU OF PRISONS' POLICY ON PRESS INTERVIEWS WITH INMATES.**

The Bureau of Prisons' policy on press interviews with inmates is contained in Bureau of Prisons Policy Statement 1220.1A (Feb. 11, 1972).<sup>\*</sup> The Policy States:

<sup>\*</sup> Policy Statement 1220.1A is reprinted in full at Fed. 28-26.

ment uses the term "interview" to mean a face-to-face oral communication that is planned in advance, involves a previously designated inmate, and lasts a sufficient time to permit an in-depth discussion. App. 175, 190, 91, 198.

The Policy Statement prohibits all interviews between newsmen and inmates in all circumstances, regardless of the characteristics and record of the inmate sought to be interviewed, the willingness of the inmate to be interviewed, the institution in which he is held, conditions prevailing at that institution, and any other factors. The prohibition extends to "schools or business establishments which employ inmates in community programs." § 4(b)(8). Thus even prisoners released into the community under various training, furlough and other programs involving unsupervised contact with non-prisoners may not be interviewed by the press. The no-interview policy applies uniformly to the six major federal penitentiaries and the entire far-flung complex of institutions, camps, community treatment centers, minimum security compounds, and schools and business establishments which employ inmates in various special programs.

Policy Statement 1220.1A permits a newsmen to hold a "conversation . . . with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities." § 4(b)(6). In general, "conversations" as distinct from "interviews" occur when a newsmen is taking a guided tour of an institution and stops to ask an inmate about the food, or the training programs, or a similar matter. As Warden John Norton of Danbury testified, "The distinction between conversation and interview is a few

questions almost on the move, whereas an interview is sitting down at length with a named individual." App. 108. A conversation differs from an interview in that it is spontaneous rather than planned in advance, involves a randomly encountered inmate rather than one designated in advance, and lasts a few minutes rather than a sufficient time to permit in-depth discussion. App. 174-75, 108-110, 207-08, 227. Moreover, the Policy Statement permits only conversations about "institutional facilities, programs and activities." It does not permit conversations about inmate strikes and other disturbances of normal prison routine. App. 94.

The Policy Statement has been interpreted by the Bureau to permit a newsmen to interview a randomly selected group of inmates. App. 180-90, 226-27.

It permits inmates to send to newsmen letters which are not opened by prison officials. § 4(h)(1). Newsmen may write to inmates, but their letters are inspected by prison officials for contraband, and are read for content which would incite unlawful conduct. § 4(h)(2).

The Policy Statement encourages newsmen to visit federal correctional institutions for the purpose of preparing reports about institutional facilities, programs and activities. § 4(h)(3). Newsmen may also visit schools and business establishments which employ prisoners in community programs, if the permission of the school or employer is obtained in advance. § 4(h)(4). Finally, the Policy Statement permits newsmen to photograph programs and activities at federal correctional institutions. Inmates may be photographed if their permission is obtained. § 4(h)(7).

#### IV. PROCEEDINGS BELOW.

Upon being denied permission to interview inmates at Lewisburg and Danbury, respondents sued for declaratory and injunctive relief. The District Court denied respondents' motion for a temporary restraining order. App. 78-79. Thereafter, respondent Hagdickian visited Lewisburg and Danbury prisons and made use of the opportunities afforded him under the Policy Statement, but was not permitted to interview any inmate individually. At Lewisburg he met with a randomly selected group of inmates. App. 90-93. A hearing was then held on respondents' motion for a preliminary injunction. The evidence consisted almost entirely of live testimony. At the conclusion of the hearing and at the court's suggestion, the parties submitted the entire case. The District Court held for respondents, and denied a stay. The Court of Appeals also denied a stay. This Court granted a stay. 408 U.S. 912 (1972). Petitioners appealed to the Court of Appeals, which remanded for additional findings and for reconsideration in light of *Bransburg v. Hayes*, 408 U.S. 906 (1972), which was decided the day before oral argument. On remand, the District Court heard additional live testimony, received depositions and evidence of the policies in numerous state and local jurisdictions, and issued a new opinion, detailed findings and conclusions and a new order. Petitioners again appealed. While this case was pending in the Court of Appeals, petitioners sought certiorari before judgment in this Court. While the petition was pending, the Court of Appeals affirmed the judgment of the District Court. This Court granted certiorari, and consolidated this case with *Procunier v. Hillery*, No. 73-754, and *Pell v. Procunier*, No. 73-918.



## V. THE RECORD.

### A. The Press Interest in Private, In-Depth Interviews with Inmates.

On this issue the District Court received extended testimony from six persons.

Arthur L. Edman served as general counsel to the New York State Special Commission on Attien, which prepared the official report on the Attien riots of 1971. In that capacity he supervised the Commission's entire investigation, including the largest program of interviewing prison inmates ever undertaken by persons other than prison officials. Mr. Edman testified on the basis of his experience in directing some 1,000 interviews with inmates, at least 75 of which he conducted personally. App. 286-91. Since Mr. Edman is not a newsman, his testimony cannot be regarded as self-serving. But since his investigative function was similar to that of a newsman, his experience is highly relevant to the press interest in this case.

Ellie Abel is Dean of the School of Journalism at Columbia University, and Ray M. Fisher is Dean of the School of Journalism at the University of Missouri. Both testified on the basis of extensive experience as working journalists and as educators at two of the Nation's leading journalism schools. App. 302-04, 479-82.

Three reporters also testified. Respondent Ben Bagdikian is an experienced reporter on prisons, who has conducted many interviews with prisoners. App. 9-47, 80-88. Timothy Leland, Assistant Managing Editor of *The Boston Globe* and head of its investigative reporting team, has won the Pulitzer and other prizes for investigative reporting. App. 352-53. John

W. Machacek, a reporter for *The Rochester Times Union*, won a Pulitzer Prize in 1973 for his coverage of the Attica riots. App. 501-02.

Witnesses Laman, Fisher, Bagdikian and Leland testified in court; witnesses Abel and Machacek testified at deposition. All were subject to cross-examination.

On the basis of their testimony and other evidence, the trial court stated:

"The Court has determined on the basis of detailed factual findings filed herewith that private personal interviews are essential to accurate and effective reporting. Ethical newspapers rarely publish articles based on unconfirmed letter communications. Reliability of such information must be determined by face-to-face confrontation. This is universally recognized by experienced journalists and demonstrated by the results of many confidential interviews conducted during the recent Attica investigation. Testimony of Laman and Fisher and the Attica Report itself are particularly persuasive on this key issue." 357 P. Supp. at 781.

The detailed findings of the court that support this general finding appear at Pct. 50-57.

Mr. Laman described what the Attica Commission wanted to find out:

"The objective of the interviews was to determine what were the conditions at Attica, what were the events that led to the uprising, what happened during the uprising, why did the negotiations fail, what happened during the police assault, were there any reprisals afterward, and what were the conditions at Attica at the time that we were conducting our interviews." App. 290.

This is precisely the kind of information a newsmen would seek. Mr. Laman testified on the basis of his experience that he could not have obtained the necessary information through correspondence with inmates:

"[I]t is the same reason that I have always found, as a lawyer, that written interrogatories are not as effective as oral cross-examination, in talking to witnesses. Because you don't have the opportunity of an immediate follow-up.

"Also, in an institution like Attica, you are dealing with a number of people who are not literate; and you are also, when you submit written questions, running the risk that the answers that you get will not be the answers of that inmate but rather will be the answers of everybody he has talked to, shown the questionnaire to; and that we are getting again a response that reflects peer group pressure, or administration pressure, rather than the conviction of the inmate, himself." App. 203.

Mr. Laman testified further that interviews with groups of inmates were unsatisfactory for his purposes:

"We found that in the group interviews the inmates tended to give us rhetoric, rather than facts; and that we were experiencing virtually the same phenomena that the observers and press that entered the D Yard during the uprising had faced, namely, that in the interest of showing solidarity, inmates were making speeches to us rather than confiding what I knew in many cases to be the fact.

"I should add that the basic problem in conducting interviews at a prison is that it is a society in which inmates face sanctions and rewards not just from the administration but from other inmates; and that when an inmate sees you in private, he

will tell you things about the administration that may not only be unfavorable but may in many cases be favorable. I found that when we saw them in group, there was a tendency to say nothing favorable about the administration and instead simply to make a speech about how horrible conditions were. In fact, many of the inmates who would say this in group would say something different when they were seen alone." App. 200-01.

Mr. Linnan concluded, "[T]he Commission's experience was that the only interviews that were fruitful for us were those which were conducted privately . . . ." App. 206.

Finally, Mr. Linnan gave specific examples of information the Commission obtained from private in-depth interviews with inmates which could not have been obtained in any other way:

" . . . the extent of racism was something which we got more perception of from the private interviews than we got from the public and group interviews. In particular, inmates were more willing to talk about racism, not simply by the administration but also racism among inmates; whereas, when they were interviewed in the presence of other inmates, they would ignore the racism by inmates altogether.

"The presence of homosexuality, and both forcible and consensual, was a subject on which inmates appeared to talk more freely when they were in a private interview than when they were in group or when they were talking publicly.

"There is something which is not stressed in our description of conditions because we found it not to be a major factor at Attien, and that is the question of the issue of physical brutality toward inmates. The press, before this investigation, had played that up as the major grievance at Attien.

We found, when we talked to inmates privately, that the incidence of physical confrontation between officers and inmates was rather limited, and that the real grievance was not about those incidents, but rather about what they would feel was a form of psychic repression, depriving people of their manhood. Therefore, I think a lot of the myth about physical beatings was dispelled.

"We were able to ascertain the extent of tension at the institution, the role of groups at the institution before the uprising. We were able to ascertain the method that the officer, who died during the taking of the prison by the inmates, had died. We were able to ascertain the extent to which inmates ended up in the Yard, either through fear or through compulsion by others, as opposed to acts of volition by themselves.

"In general, when talking publicly, particularly during the uprising, the inmates said that this was a great act of voluntary, concerted action; whereas, in privacy, you got a very different picture of the circumstances under which people entered the Yard.

"We were able to obtain the details of the reprisals that took place after the uprising. That was a subject on which inmates were very reluctant to testify publicly, when we had our public hearings, because of fear of reprisals from the Parole Board or other bodies. Not that I am saying that they would have taken place, but the inmates feared they would take place.

"We were able to ascertain the fact that a majority of the inmates really were prepared to accept the 28 points, but for various reasons never were willing to express themselves on that in the Yard. We were able to detail what the factors were that led them to remain silent.

"...

"We were able to determine the fact that several inmates, including L. D. Barkley, who were rumored to have been killed after the prison was retaken, actually died during the initial seconds of the police assault. That was one that posed a particular problem, because inmates in group tended to rely on rhetoric, saying that he was murdered after the uprising had ended; whereas, in privacy, some of them, including his friends, were willing to talk about the circumstances of his death.

"Above all, we were able to get a glimpse of what we have described as the dehumanizing conditions that existed in the prison which inmates were willing to cite fact about in private interviews; whereas, when you saw them in groups, it was again very conclusory-type statements." App. 201-03.

Mr. Edman's testimony was confirmed by the other witnesses.

'The other witnesses all testified to the inadequacy of news gathering by mail.' Dean Fisher, Dean Abel, and Mr. Leland emphasized that as a practical matter it is not possible to evaluate an inmate's reliability (accuracy) or credibility (honesty) where communication is by mail. App. 312-13, 401, 303-04. They pointed out that an exchange of correspondence does not permit a newsmen to pursue a line of questioning in depth or to ask follow-up questions on the basis of a particular response. *Id.*; see also App. 513 (Machacek). Mr. Bagdikian and Mr. Machacek testified that communication by mail can make it impossible to develop current

<sup>2</sup> Two of the letters received by Mr. Bagdikian inviting him to Lewisburg appear at App. 61, 60-70.

information about events or prison conditions. App. 95-96, 513.

The evidence showed that casual conversations with randomly encountered inmates are not an adequate substitute for private, in-depth, uncensored interviews with designated inmates, for which the reporter can prepare in advance. Director Carlson and the wardens at Lewisburg and Danbury all testified that conversations are very limited in duration, App. 904, 175, 104, so that they permit only the most superficial discussion of a topic. Policy Statement 1990.1A specifically restricts the content of such conversations, and Mr. Bagdikian's experience during his visits to Lewisburg and Danbury was that the restriction was enforced. App. 112-13. Moreover, conversations are not private; they are likely to be conducted within the hearing of the prison official accompanying the newsmen on his tour of the facility. App. 116-18. In addition, because a newsmen is not permitted to designate in advance the inmates with whom he will converse, the opportunity for casual conversation gives him no access to inmates who are known to have particular complaints or other particular information. Finally, under § 4(h)(6) of the Policy Statement, a newsmen may not identify in his story an inmate with whom he had a conversation, and this prohibition will detract from the force of the story and from the credibility of the inmate on whose statements it is based.

Mr. Bagdikian's experience at Lewisburg confirmed his expert judgment that group interviews are "very unproductive" for the purpose of gathering information. App. 115. The particular inmates he traveled to Lewisburg to interview were not part of the randomly selected group he met with. Moreover, the



inmates in the group stated they could not speak with candor out of fear that what they said would be reported to prison officials by other inmates and result in reprisals. App. 92-93.

The testimony also showed that the willingness of federal prison officials to provide the news media with information is no substitute for private, individual interviews with inmates. Mr. Machacek testified extensively about his Pulitzer Prize winning discovery that prison officials in New York State had deliberately misled the press when they stated that the nine guards killed during the state police assault on Attica had died from slit throats, when in fact they had died from gunshot wounds. App. 502-04, 513. Mr. Machacek's account was confirmed by the Report of the New York State Special Commission on Attica, Plaintiffs' Exhibit 9, pp. 455-62. Dean Fisher, Dean Abel and Mr. Leland testified more generally that as a matter of common sense and sound journalism, a reporter cannot satisfactorily rely solely or principally on the statements of public officials when the proper discharge of their official responsibilities may be in question. App. 313, 488-89, 495-96, 302.

All of the witnesses on the press interest testified that private face-to-face interviews in depth are an indispensable tool of news gathering in the prison context. Dean Abel summed the matter up: "the interview is clearly the fundamental method of reaching out to people who have information, in getting from them that information, so that you, in turn, may then communicate to a larger audience." App. 483. The witnesses provided from their own experience a number of examples of specific instances where face-to-face interviews played the critical role in a newsman's decision to pursue a news story or to refrain from publishing it.

App. 300-07, 355-58, 484-85, 508-11. Interviews are so important in news gathering that the development of interviewing techniques is a central feature of the curricula of the nation's most prestigious journalism schools. App. 304-06, 482-83. A published study concluded that "lack of contact between the newsman and a news source increases the chance that serious subjective errors will be perceived as occurring or will occur."<sup>12</sup> Finally, a sociologist of prisons, who also had extensive experience as a prison administrator, testified that he could obtain an understanding of a penal institution only if he had the opportunity to conduct face-to-face interviews with inmates and prison officials. App. 599.

The evidence also confirmed Mr. Edman's conclusion that interviews with inmates must be in private if they are to be candid. Mr. Bagdikian testified on the basis of his extensive experience in reporting on prisons that the presence of a prison official would distort the interview because "a prison official has total control over the life of a prisoner and the prisoner knows it." App. 67. Mr. Bagdikian's experience with group interviews confirmed that distortions will occur if other inmates are present during an interview with a particular inmate. See pp. 15-16, *supra*.

On the basis of all the foregoing evidence, the District Court found that the accurate and effective reporting of news about prison conditions and events and prisoner grievances has a critical dependence upon the opportunity for face-to-face interviews with inmates. Finding 27, Pet. 57. The Court of Appeals agreed. See Sup. Pet. 12-15.

<sup>12</sup> G. Lawrence and D. Grey, *Subjective Inaccuracies in Local News Reporting*, 40 *Journalism Quarterly* 758, 766 (1963), Plainiffs' Exhibit 65.

### **B. Correctional Considerations.**

On this issue, the District Court received testimony from officials of the prison systems in Massachusetts, Illinois, Florida, California, Iowa, New York City, the District of Columbia, Cook County, Illinois, and the federal prison system.

John O. Boone, Commissioner of the Massachusetts State Department of Corrections, testified on the basis of twenty-one years' experience in the field of corrections, including his experience as Commissioner of the Massachusetts system, Superintendent of the Lorton Correctional Complex and Chief of Classification and Parole at the federal prisons in Atlanta and Terre Haute. Commissioner Boone testified that Massachusetts has a policy which generally permits press-inmate interviews, and that this policy was working successfully. He stressed that press-inmate interviews had not created any disturbances, disciplinary problems, or other security problems, but rather had helped to alleviate tensions within Massachusetts penal institutions. App. 321-48.

Peter B. Bensinger, Illinois Director of Corrections, testified on the basis of his experience as Director of the Illinois penal system and President of the Association of State Correctional Administrators. Director Bensinger testified that a discretionary press-inmate interview policy was working satisfactorily in Illinois, and had not created any major disciplinary or other security problems. He stressed that his wardens could identify inmates who were potential trouble-makers, and thus had the ability to make sound judgments as to whether particular interviews should be granted. Director Bensinger further testified that the Association

of State Correctional Administrators had promulgated a guideline providing for a discretionary press-inmate interview policy, having also concluded that prison administrators can effectively exercise discretion in determining when to grant press-inmate interviews, App. 575-04.

Hans W. Mattick, Professor of Criminal Justice and Director of the Center for Research in Criminal Justice at the University of Illinois, testified on the basis of his extensive research in the area of criminology, his experience as operating head of the Cook County Jail, as an official at Statesville Penitentiary, Joliet, Illinois (where he interviewed all inmates up for parole and made recommendations to the Parole Board), and as an administrator of prisoner-of-war camps. Professor Mattick testified that he strongly favored a policy permitting press-inmate interviews, and that he did not believe that such a policy would create "big wheels" or lead to other disciplinary problems. He also stressed that a discretionary press-inmate interview policy would not impede the goal of uniformity, for any differences in the exercise of discretion under such a policy would be insignificant in view of the substantial differences among all federal penal institutions, each of which reflects the region in which it is located, the style of its administrator, staff, and inmate population, and its physical plant and other facilities. He concluded that a policy permitting press interviews would work more effectively in a federal than in a state penal system because of the high percentage of white collar inmates in federal institutions, App. 575-008.

Benjamin Malcolm, Commissioner for the New York City Department of Corrections, testified on the basis

of over twenty years' experience in the field of corrections, Commissioner Malcolm testified that the New York City policy, which generally permits press inmate interviews, has been advantageous to the correctional system by alleviating inmate tensions and improving public understanding of the correctional system. He emphasized that this policy had not impeded the correctional process, and had not created any administrative, disciplinary, or other security problems. App. 131-41.

Leroy Anderson testified on the basis of his experience as Executive Assistant to the Director of the District of Columbia Department of Corrections. He testified that the District of Columbia's discretionary press-inmate interview policy was successful and had created no problems or difficulties of any kind. App. 141-51.

Noah L. Alldredge, testified on the basis of his experience as warden of the federal prison at Lewisburg and then at Terre Haute. He testified that there had been a disturbance at Terre Haute following a congressional aide's interviews with inmates. Warden Alldredge did not testify that press interviews had caused the disturbance, and acknowledged that there had been disturbances before the interviews. He added that only a small portion of the inmate population posed disciplinary problems, and that his staff was generally able to identify such persons. App. 172-95, 170-403.

Leon V. Brewer, Warden of the Iowa State Penitentiary, testified on the basis of over fifteen years' experience in the field of corrections. Warden Brewer testified that Iowa has a discretionary press-inmate inter-

view policy, and that during a period of tension at the Iowa State Penitentiary interviews were granted, and the subsequent publication of news stories about the prison heightened the state of tension. He acknowledged, however, that he was opposed to the granting of press interviews at that particular time because of the tense conditions at the penitentiary, but was overruled by the Governor's office. He testified that since that incident, he has continued to permit press interviews without creating any problems, for the decision to grant such an interview depends on an analysis of the inmate involved, the climate of the institution, and the situation at the time. App. 430-41.

John J. Norton, Warden of the federal correctional institution at Danbury, Connecticut, testified on the basis of over twenty years' experience in the field of corrections. Warden Norton testified that he believed that press-inmate interviews should be prohibited because such interviews would build up the leadership of individual inmates. He offered no examples or other evidence to support this conclusion, nor did he state the reasons for this belief. App. 196-206.

Raymond K. Procunier, Director of Corrections for the State of California, testified on the basis of his experience with California penal institutions. Director Procunier testified that California had once permitted press-inmate interviews, but that this policy had been changed to an outright prohibition after the death of George Jackson and four other persons during an escape attempt. Director Procunier explained that on penological grounds he favored a flexible press-inmate interview policy, but that California had adopted an outright prohibition because counsel advised him that

selective prohibition would not be possible. App. 154-79.

Louis L. Walnwright, Director of the Florida Division of Corrections, testified on the basis of his experience as Director of the Florida corrections system. Director Walnwright testified that he was opposed to a press-inmate interview policy because he believed that it would lead to prison disturbances. He based this view on the fact that his superior had granted certain press interviews at the Florida State Prison over his objection, and four months later serious disturbances occurred. He attributed these disturbances to the published reports which resulted from the press interviews, but admitted that racial tensions existed at the institution and that there had been disturbances on various occasions prior to the granting of any press interviews. App. 403-23.

Director Carlson testified on the basis of his experience of over fifteen years in the field of corrections. He described the history of Policy Statement 1220.1A and set forth the reasons why he adopted it. App. 206-28, 443-50.

In addition to testimony from prison officials, evidence was received showing the current policy with respect to confidential in-depth interviews between members of the press and inmates of correctional institutions in twenty-four American state and local jurisdictions. The trial court found that of these, eleven generally permit such interviews. Seven American jurisdictions have policies that neither generally permit nor generally deny such interviews, but vest in correctional administrators discretion to permit or deny them in individual cases. Five American jurisdictions



generally prohibit such interviews. New Mexico has a unique policy, permitting randomly selected inmates to be interviewed individually. See Finding 52, Pet. 67.

On the basis of this evidence, the District Court found:

"The rule adopted by the Bureau of Prisons is a rule of comfortable convenience and not of compelling necessity . . . . While [press] access may be limited in individual circumstances, the Government has totally failed to demonstrate any 'compelling' or 'paramount' need. The absolute ban cannot withstand analysis." 357 F. Supp. at 792.

The Court of Appeals agreed:

"Thus, while we do not question that the concerns voiced by the Bureau are legitimate interests that merit protection, we must agree with the District Court that they do not, individually or in total, justify the sweeping absolute ban that the Bureau has chosen to impose . . . . In this case the scope of the interview ban is excessive; the Bureau's interests can and must be protected on a more selective basis." Sup. Pet. 23.

## SUMMARY OF ARGUMENT

### I

The First Amendment protects the public's right to be informed by the press about matters of public interest, including prisons. On many occasions this Court has recognized the fundamental importance of an informed public, and the special role of the press under the First Amendment as informer of the public. Because prisons are important public institutions which exercise broad discretion over the lives of inmates, and because they are not freely open to the entire public, the informing function of the press is particularly im-

portant as to them. There is no other source of public information concerning prisons which can substitute for press reports. The prospects for prison reform and for reducing the number of civil rights suits brought by prisoners in federal courts depend to a significant degree on the opportunity for the press to inform the public about prison conditions. Thus this case presents an important opportunity for this Court to remove an artificial restraint on the political process, whose functioning depends on public opinion informed by the press.

# II

The right of the press to gather news is an indispensable element of the public's First Amendment right to be informed about matters of public interest. This general principle was recognized in *Branzburg v. Hayes*, 408 U.S. 665 (1972), but the decision in the instant case cannot be made by reference to *Branzburg*, but only by weighing the asserted press and governmental interests. The Government has a heavy burden to demonstrate the necessity for its broad prior restraint.

Policy Statement 1290.1A directly and severely restricts news gathering by denying the press the use of a critical news gathering method. All that respondents claim is a right of a newswoman to communicate with a willing prisoner in an interview for the purpose of news gathering, subject to reasonable prison regulations as to time, place and manner. A similar opportunity is already given to relatives, friends, lawyers, clergymen, public officials, former and prospective employers and others who visit inmates. Accordingly, this case can be decided very narrowly.

The opportunity for private in-depth face-to-face interviews is critical for accurate and effective news gathering. Such interviews are significantly superior to all alternative methods of news gathering in the context of prisons because they are flexible in format, permit an evaluation of demeanor, allow pursuit of topics, facilitate the communication of a large quantity of information, do not involve the delay associated with mail, and can be used to communicate with illiterate inmates. Letters, casual conversations, group interviews and statements from prison officials do not obviate the critical need for interviews with individual inmates.

#### IV

No compelling governmental interest supports Policy Statement 1220.1A's total ban on press interviews with inmates. The interest in prison discipline and security, although certainly a compelling interest, may not be invoked as a "talismanic incantation" to defeat a constitutional claim without close analysis of the particular regulation at issue and of the evidence as to its necessity.

A. The experience of numerous prison systems throughout the United States demonstrates that there is no compelling reason to ban all press-inmate interviews. The record contains extensive evidence on the successful experience of several jurisdictions with a policy generally permitting press-inmate interviews and denying them in certain narrowly defined circumstances.

B. The "big wheel" theory does not justify a total ban. Big wheels are a tiny percentage of the inmate

population, and are readily identified by prison officials. The order developed by the courts below permits prison officials to deny interviews with big wheels and other inmates with a history of disruptive behavior.

C. The record does not show that press interviews cause prison disturbances. None of the testimony concerning prison disturbances pointed to press interviews as a significant causal factor.

D. The Bureau of Prisons has no interest in uniformity sufficient to justify a total ban on press-inmate interviews. The order developed by the courts below is fully consistent with the Bureau's interest in uniformity and its general practice of giving broad discretion to wardens within the limits of policy guidelines.

E. Property law concepts do not justify the total ban. Prisons are public property, not private. The Government may not invoke property concepts to justify sealing off thousands of persons from press and public scrutiny. Since newsmen seek to use prison property only in the same way that inmates' relatives, friends, lawyers and other visitors use it, they cannot be regarded as trespassers. In the circumstances of this case, First Amendment rights outweigh any countervailing claims of property.

F. No other considerations justify a total ban. Press-inmate interviews will not create any undue administrative burdens, nor do newsmen jeopardize prison security.

## V

A prisoners' right to be interviewed is no substitute for a press right to interview. Prisoners may not be able or willing to initiate and pursue a request to be interviewed in the face of opposition from prison

officials. The press is in a better practical position to assert and protect the right to an interview. The interest of the press and public is different from that of the prisoner in being interviewed. These interests rest on different foundations in First Amendment law.

## VI

The order developed by the courts below is sound. It provides for the exercise of informed discretion by prison officials on a case-by-case basis, and articulates an objective test for their guidance. The record shows that the order is feasible and consistent with correctional goals, and it properly reflects the weight of First Amendment values.

## ARGUMENT

### I. THE FIRST AMENDMENT PROTECTS THE PUBLIC'S RIGHT TO BE INFORMED BY THE PRESS ABOUT MATTERS OF PUBLIC INTEREST, INCLUDING PRISONS.

On many occasions this Court has emphasized that the overriding subject of First Amendment protection is the public's right to receive information and opinions concerning matters of public interest. In *Garri-son v. Louisiana*, 379 U.S. 64, 77 (1964), the Court, per Mr. Justice Brennan, upheld "the paramount public interest in a free flow of information to the people concerning public officials, their servants." In *Associated Press v. United States*, 326 U.S. 1, 20 (1945), it observed that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." In *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969), the Court, per Mr. Justice White, characterized the rights of television and radio audiences as "paramount. . . . It is the right of the public to receive suit-

able access to social, political, esthetic, moral and other ideas and experiences which is crucial here." In *Klein-dienst v. Mandel*, 408 U.S. 753, 762 (1972), the Court, per Mr. Justice Blackmun, stated: "'It is now well established that the Constitution protects the right to receive information and ideas.'" See also *Lamont v. Postmaster General*, 381 U.S. 301 (1965).

The public's right to be informed is critical to its capacity to make intelligent decisions in our democratic political system. It is also indispensable to the progress of science, the arts, the economy, and social life generally. *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 147 (1967) (plurality opinion); *Rosenbloom v. Metro-media, Inc.*, 403 U.S. 29, 42 (1971) (plurality opinion).

This Court has also recognized many times that the First Amendment assigned to the press a unique, constitutionally protected role as informer of the public:

"The Constitution specifically selected the press ... to play an important role in the discussion of public affairs. Thus the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve." *Mills v. Alabama*, 384 U.S. 214, 219 (1966).<sup>8</sup>

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<sup>8</sup> The unique constitutional status of those who inform the public is entirely consistent with the application to them of laws of general scope that do not impede the performance of First Amendment functions. Thus the press is properly subject to tax laws, antitrust laws, labor laws, and the like. The special constitutional status is relevant, however, whenever, as in the instant case, a statute or regulation is directed solely at the press or directly impedes its carrying out of the informing function. See, e.g., *Gros-jean v. American Press Co.*, 297 U.S. 233 (1936).

"A broadly defined freedom of the press assures the maintenance of our political system and an open society." *Time, Inc. v. Hill*, 385 U.S. 374, 389 (1967). The informing function of the press was perhaps most simply and forcefully described by Mr. Justice Black in *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) (concurring opinion):

"In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people."

See also *Niemotko v. Maryland*, 340 U.S. 268, 276 (1951) (Frankfurter, J., concurring).<sup>9</sup>

<sup>9</sup> The Government professes not to know what persons are encompassed within "the press". See Brief for Petitioners 48-52. Yet Policy Statement 1220.1A itself defines the term "news media" to mean "A Newspaper entitled to second class mailing privileges, a magazine or periodical of general distribution; a national or international news service; a radio or television network or station." ¶ 4(a). The Policy Statement goes on to recognize a number of rights of the "news media" so defined. A right to interview would not present any additional definitional problems. One might cavil at the Policy Statement's definition, but there is no need to do so in the instant case, for respondents certainly fall within the definition. The question of who constitute "the press" exists for every governmental agency, including this Court, that holds press conferences or issues press releases or has a press gallery or room, or provides other facilities or services for newsmen. The question has been occasionally litigated, see *Consumers Union v. Periodical Correspondents' Ass'n*, 365 F. Supp. 18 (D.D.C. 1973); *Quad-City Community News Service v. Jebens*, 334 F. Supp. 8, 13-14 (S.D. Iowa 1971), but certainly there has not been a flood of litigation. Presumably, most of the questions that have arisen have



Although this Court has not yet had occasion to consider the application of these principles to prisons, a majority of lower federal cases have held that they apply with the same or even greater force in the prison context than in other contexts. See, in addition to the decision below, *Burnham v. Oswald*, 342 F. Supp. 880 (W.D. N.Y. 1972); *Houston Chronicle Pub. Co. v. Kleindienst*, 364 F. Supp. 719 (S.D. Tex. 1973), *app. dismissed*, No. 73-3590 (5th Cir. Jan. 11, 1974); *McMillan v. Carlson*, C.A. No. 72-2551-M (D. Mass. Dec. 31, 1973), *aff'd*, No. 74-1024 (1st Cir. Mar. 20, 1974); *Globe Newspaper Co. v. Bork*, Civ. No. 73-3748G (D. Mass. Feb. 12, 1974); see also *Nolan v. Fitzpatrick*, 451 F.2d 545 (1st Cir. 1971); *Palmigiano v. Travisono*, 317 F. Supp. 776 (D.R.I. 1970).<sup>10</sup>

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been resolved pragmatically and amicably. There is no reason to doubt that the Bureau of Prisons can resolve any such problems in the same way. In *Branzburg*, the Court was concerned about unlimited assertions of privilege by persons claiming to be members of the press. 408 U.S., at 703-04. The Court was concerned about possible large-scale denials of evidence to grand juries and about denials in questionable cases. No such problems exist in the present context. Whatever the definition of "the press", the Bureau of Prisons can protect all its legitimate administrative and security interests: it can set a reasonable limit on the total number of interviews permitted and ration interviews on some equitable basis (e.g., pooling, first-come-first-served), and it can exclude any person claiming to belong to the press whom it has substantial reason to believe will violate the rules governing prison visitors. Cf. *Healy v. James*, 408 U.S. 169 (1972).

<sup>10</sup> *Contra*, *Seattle-Tacoma Newspaper Guild v. Parker*, 480 F.2d 1062 (9th Cir. 1973); *Mitford v. Pickett*, 363 F. Supp. 975 (E.D. Ill. 1973); *Smith v. Bounds*, Civ. No. 2914 (E.D.N.C. Mar. 14, 1972), *aff'd* No. 73-1658 (4th Cir. June 8, 1973); *Hillery v. Procnier*, 364 F. Supp. 196 (N.D. Cal. 1973), *prob. jur. noted sub nom. Pell v. Procnier*, 42 U.S.L.W. 3422 (Jan. 21, 1974); see also *Seale v. Manson*, 326 F. Supp. 1375 (D. Conn. 1971).

Prisons, like other public institutions, are ultimately the responsibility of elected public officials. As a critical part of the system of criminal law administration, they directly affect the quality of life in society. "On any given day, approximately 1,500,000 people are under the authority of [federal, state, county and municipal prison] systems. The cost to taxpayers is over one billion dollars annually. Of those individuals sentenced to prison 98% will return to society."<sup>11</sup> Accordingly, the public's interest in being informed about prisons is at least as strong as its interest in being informed about other governmental matters. Without adequate information, the public cannot intelligently vote and make its policy preferences known. Because members of the public cannot freely enter prisons and inform themselves of conditions there, the public depends on the press for its information about prisons.

Particularly because prison officials exercise broad discretion over the lives of inmates, the need for effective checks on their actions is paramount. Although administrative and judicial forums provide some oversight, the fundamental check on the exercise of governmental power is public opinion informed by the free press.<sup>12</sup>

<sup>11</sup> Subcomm. on Courts, Civil Liberties and the Administration of Justice of the House Comm. on the Judiciary, 93d Cong., 2d Sess. Report on Inspection of Federal Facilities at Leavenworth Penitentiary and The Medical Center for Federal Prisoners 2 (Comm. Print. 1974).

<sup>12</sup> "As with public institutions in every branch of government, the press plays an invaluable watchdog function with respect to prisons, whose very nature imbues the press' function with heightened significance in comparison to other, more open institutions." *Globe Newspaper Co. v. Bork*, No. 73-3748-G, p. 8 (D. Mass. Feb. 12, 1974). The Chairman of the New York City

In recent years, the importance of greatly increasing public information about prisons has been vigorously emphasized by Mr. Chief Justice Burger. He has characterized corrections as "the most neglected, the most crucial and probably the least understood phase of the administration of justice."<sup>13</sup> He has per-

Board of Corrections has written: "There are few things more powerful in restraining arbitrary or excessive action than the sure knowledge of public accountability. There are few things more necessary than for the public to understand the strain of the correction officer's work and the alienation he feels because of the hostility directed toward him. . . . The correctional community, from the wardens to the guards, has complained forever that its work is not appreciated and the community really does not care what happens to correctional personnel or what goes on in the prisons. The constant, informed attention of the media can illuminate the whole picture, giving balance to the judgments that must be made and appreciation for the courage and compassion of many of the personnel involved." W. vanden Heuvel, *The Press and the Prisons*, Colum. Journalism Rev. 38, 39 (May/June, 1972).

<sup>13</sup> W. Burger, "For Whom the Bell Tolls", p. 2 (Remarks before the Association of the Bar of the City of New York, N.Y., N.Y., Feb. 17, 1970). The Chief Justice also said: "Perhaps the real evil underlying our penal system is not its concepts, whether rehabilitation or vengeance or something else, *but the lack of any agreed concept*, the absence of plan and purpose, and worst of all—the indifference that underlies the neglect." *Id.*, p. 6 (italics in original). On another occasion he observed: "Yet with all this development of the step-by-step details in the criminal adversary process, we continue, at the termination of that process, to brush under the rug the problems of those who are found guilty and subject to criminal sentence. In a very immature way, we seem to want to remove the problem from public consciousness. It is a melancholy truth that it has taken the tragic prison outbreaks of the past three years to focus widespread public attention on this problem." W. Burger, "Our Options Are Limited", pp. 4-5 (Remarks before the 1972 Annual Dinner of the National Conference of Christians and Jews, Phila., Pa., Nov. 16, 1972). Director Carlson agrees: "[W]e need more facilities, positions, personnel, recreational activities and so forth. I think corrections has been

ceptively described the severe difficulties prison administrators have faced in attempting to rehabilitate the prisoners whom society has placed in their care, and has referred to

"the desperate need for comprehensive and coordinated planning and research at local and national levels. This requires a monumental effort with the best leadership and brains of labor unions, industry, the Departments of Justice, of Labor, and of Health, Education and Welfare. To be successful these programs need local community support which must involve churches, YMCA's, Chambers of Commerce and Bar Associations. . . . If we want prisoners to change, public attitudes toward prisoners and ex-prisoners must change. . . . Where do you begin? The same way you prepare a case. By getting all of the facts, visiting the scene if necessary, and then organizing the evidence. . . . A visit to most prisons will make you a zealot for prison reform."<sup>14</sup>

Since not everyone can visit prisons, just as not everyone can attend sessions of Congress or public trials, the press is a necessary representative of the public in reporting on prisons as on other governmental agencies.

The Government argued below that press interviews with inmates are unnecessary because inmates can take their grievances to court. Indeed, in recent years prisoners in increasing numbers have brought civil

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grossly neglected in the years gone by." App. 209. See also President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections 1 (1967) (corrections "a world almost unknown to law-abiding citizens").

<sup>14</sup> W. Burger, "For Whom the Bell Tolls", pp. 9-11 (Remarks before the Association of the Bar of the City of New York, N.Y., N.Y., Feb. 17, 1970).

rights suits in federal court to challenge the conditions under which they are held and the treatment they receive.<sup>15</sup> Many of these suits have had merit and have resulted in judicial condemnation of conditions which an informed American public would not have tolerated.<sup>16</sup>

However, courts ought not to be the principal vehicle for publicizing grievances against public officials or the principal reformers of social institutions. Under our constitutional scheme of government, the free press should be able to report grievances to the public so that *an informed public* can make its weight felt within the *political* branches, and judicial action will be secondary and less frequent. This democratic process has not been at work in the prison context because prison officials customarily have denied the press an opportunity to present to the public a full picture of prison life, including the views of inmates obtained through in-

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<sup>15</sup> From 1966 to 1972 the number of civil rights suits brought in federal district courts by federal prisoners increased from 15 to 252; from 1972 to 1973 the number increased by an additional 64.3% to 414. From 1966 to 1973 the number of federal civil rights suits brought by state prisoners increased from 218 to 4,174. Director of the Administrative Office of the United States Courts, 1973 Annual Report, p. II-27 (Table 20). The Chief Justice devoted particular attention to the problem of increased prisoner civil rights cases in his Report on the Federal Judicial Branch, 7-10 (Remarks to the ABA, Washington, D. C., August 6, 1973).

<sup>16</sup> See, e.g., *Holt v. Sarver*, 442 F.2d 304 (8th Cir. 1971); *Roberts v. Williams*, 456 F.2d 819 (5th Cir.), cert. denied *sub nom. Roberts v. Smith*, 404 U.S. 866 (1971); *Sostre v. McGinnis*, 442 F.2d 178, 190, 193-94 (2d Cir. 1971), cert. denied, 404 U.S. 1049 (1972); *Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968) (Blackmun, J.); *Landman v. Royster*, 333 F. Supp. 621 (E.D. Va. 1971); *Wright v. McMann*, 321 F. Supp. 127 (N.D.N.Y. 1970), *aff'd*, 460 F.2d 126 (2d Cir.), cert. denied, 409 U.S. 885 (1972); *Talley v. Stephens*, 247 F. Supp. 683 (E.D. Ark. 1965).

depth interviews. See App. 338. The President's Commission on Law Enforcement and Administration of Justice concluded:

"The present problems and disabilities of American corrections reflect the relatively low priority given it in the places where political and administrative choices are made and public and private resources are allocated. . . . [R]eforms will occur only if many individuals and groups assume responsibility for creating needed change. And that, in turn, will depend upon a more complete and realistic public understanding of the problems." Task Force Report: Corrections 105 (1967).

Only when prison authorities remove the dam they have erected to stop the free flow of information to the public, will the tides of prisoner grievances be channeled away from the courts, and perhaps from outbreaks of violence, and into the political process where they belong. In removing artificial restraints on the political process, the Court will be performing its traditional constitutional function. See, *e.g.*, *Stromberg v. California*, 283 U.S. 359, 369 (1931); *Grosjean v. American Press Co.*, 297 U.S. 233, 249-50 (1936); *De Jonge v. Oregon*, 299 U.S. 353, 364-65 (1937).

Finally, the value of press interviews with prison inmates far transcends penal reform. Federal prisons house many newsworthy inmates—former public officials, businessmen, labor leaders, participants in crimes of historical importance, and others.<sup>17</sup> Press reports based on interviews with such inmates can inform the public about a wide variety of matters of interest and

<sup>17</sup> Prominent inmates are not to be identified with prison trouble-makers. See App. 388-91, 398.

importance. Thus, contrary to the suggestion in the Government's brief at p. 19, the interest of the press in interviewing inmates extends far beyond participants in prison disturbances. See, *e.g.*, *Globe Newspaper Co. v. Bork*, Civ. No. 73-3748G (D. Mass. Feb. 12, 1974) (attempt to interview author Clifford Irving); *McMillan v. Carlson*, C.A. No. 72-2551-M (D. Mass. Dec. 31, 1973), *aff'd*, No. 74-1024 (1st Cir. Mar. 20, 1974) (attempt to interview brother of James Earl Ray); App. 179 (media interest in James R. Hoffa).

**II. THE RIGHT OF THE PRESS TO GATHER NEWS IS AN INDISPENSABLE ELEMENT OF THE PUBLIC'S FIRST AMENDMENT RIGHT TO BE INFORMED ABOUT MATTERS OF PUBLIC INTEREST.**

A free press is an essential element of a democracy precisely because the individual members of the public cannot themselves, as a practical matter, gather all the information needed to exercise their political and other responsibilities. This Court's decisions on the informing function, discussed at pp. 27-29, *supra*, all recognize that the press is the agent or proxy of the public, created to do what the public cannot do for itself. Precisely in situations (*e.g.*, prisons) where the public must for good reasons be denied unrestricted access, the press should be permitted reasonable access (absent compelling reasons to the contrary). Surely it would be ironic to deny the public access to information by means of the press on the ground that the press should have no greater rights than the general public. Indeed, if the government could, without fear of scrutiny under the First Amendment, restrict the right of the press to obtain information from sources, visit places, and observe events, the right to publish would



be of little significance. Regulations of the Department of Justice relating to subpoenas to newsmen begin with the premise that "freedom of the press can be no broader than the freedom of reporters to investigate and report the news." 28 CFR § 50.10, 38 F.R. 29588 (Oct. 25, 1973).<sup>18</sup>

It is for these reasons that this Court in *Branzburg v. Hayes*, 408 U.S. 665 (1972), expressly recognized that news gathering is part of the freedom of the press protected by the First Amendment:

"Nor is it suggested that news gathering does not qualify for First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated. . . . [N]ews gathering is not without its First Amendment protections . . . ." 408 U.S., at 681, 707.<sup>19</sup>

Of course, the Court in *Branzburg* went on to hold that in the particular circumstances of the grand jury subpoenas before it, the First Amendment protection of

<sup>18</sup> Similarly, President Nixon has determined that newsmen shall have continued access to American military bases abroad "on a regular basis." 39 F.R. 5181 (Feb. 11, 1974).

<sup>19</sup> Other cases recognizing that news gathering is protected by the First Amendment are *Schnell v. Chicago*, 407 F.2d 1084 (7th Cir. 1969); *Dietsmann v. Time, Inc.*, 449 F.2d 245, 249 (9th Cir. 1971); *Associated Press v. KVOB*, 80 F.2d 575, 581 (9th Cir. 1935), *rev'd on jurisdictional grounds*, 299 U.S. 269 (1936); *Lewis v. Bazley*, 368 F. Supp. 768 (M.D. Ala. 1973) (3-judge court); *Consumers Union v. Periodical Correspondents' Ass'n*, 365 F. Supp. 18 (D.D.C. 1973); *Channel 10, Inc. v. Gunnarson*, 337 F. Supp. 634 (D. Minn. 1972); *Providence Journal Co. v. McCoy*, 94 F. Supp. 186, 195-96 (D.R.I. 1950), *aff'd on other grounds*, 190 F.2d 760 (1st Cir. 1951); *Quad-City Community News Service v. Jebens*, 334 F. Supp. 8, 13-14 (S.D. Iowa 1971); *Borreca v. Fasi*, 369 F.2d 2410 (D. Haw. Jan. 21, 1974). See also the cases cited *supra* in the text at p. 30, *supra*, and the cases in n.20, *infra*.

news gathering did not extend so far as to entitle the reporters to maintain the confidentiality of their sources. The rationale of the decision was that, in the circumstances presented, denial of a reporter's privilege of confidentiality with respect to a proper grand jury subpoena would not itself prevent a reporter from interviewing any source he desired, 408 U.S., at 681-82, and that the record failed to show that denial of the privilege would severely constrict the flow of information to the public, 408 U.S., at 690-94.

The decision in *Branzburg* turned on the weighing of the social cost of a clear and definite obstacle to a grand jury investigation against the cost of what the Court found to be an uncertain and speculative injury to the capacity of the press to gather news. On the facts before it, the Court was concerned that grand juries might lose vital testimony from eye-witnesses to crimes. The particular balance struck in *Branzburg* has no bearing on the analysis required in the instant case: the weighing of the social cost of a clear and definite obstacle to news gathering against what the courts below and the District Court in the companion cases, *Pell v. Procunier* and *Procunier v. Hillery*, found to be, at most, an uncertain and speculative injury to prison administration.

The relevance of *Branzburg* to the instant case lies in its holding that news gathering is entitled to First Amendment protection, and indeed to the protection of the normal First Amendment test requiring that regulations infringing upon First Amendment interests be narrowly and precisely drawn so as to serve only a compelling state interest by the means least restrictive of First Amendment interests. 408 U.S., at

700.<sup>20</sup> See, e.g., *NAACP v. Button*, 371 U.S. 415, 439 (1963); *Thomas v. Collins*, 323 U.S. 516, 530 (1945); *DeGregory v. Attorney General of New Hampshire*, 383 U.S. 825, 829 (1966). When prison regulations infringe upon First Amendment interests, they have no special exemption from the compelling interest test, although of course the special characteristics of prisons are given due weight in applying the test. See, e.g., *Cruz v. Beto*, 405 U.S. 319 (1972); *Cooper v. Pate*, 378 U.S. 546 (1964); *Nolan v. Fitzpatrick*, 451 F.2d 545, 548 (1st Cir. 1971); *Pierce v. La Valee*, 293 F.2d 233 (2d Cir. 1961); *Long v. Parker*, 390 F.2d 816, 822 (3d Cir. 1968); *Brown v. Peyton*, 437 F.2d 1228, 1231 (4th Cir. 1971); *Jackson v. Godwin*, 400 F.2d 529, 541-42 (5th Cir. 1968); *Sobell v. Reed*, 327 F. Supp. 1294, 1303 (S.D.N.Y. 1971); *Fortune Society v. McGinnis*, 319 F. Supp. 901, 904 (S.D.N.Y. 1970); *Carothers v. Follette*, 314 F. Supp. 1014, 1024 (S.D.N.Y. 1970).

Nothing in *Zemel v. Rusk*, 381 U.S. 1 (1965), is to the contrary. In *Zemel*, the Court held that the Passport Act of 1926 authorized the Secretary of State to refuse to validate U.S. passports for travel to Cuba,

<sup>20</sup> In post-*Branzburg* cases involving assertion of a newsman's privilege of confidentiality, the lower federal courts have recognized that news gathering is protected by the normal First Amendment test, and have weighed the competing interests on the particular records before them. See *Baker v. F&F Investment*, 470 F.2d 778 (2d Cir. 1972), cert. denied, 411 U.S. 966 (1973); *Cervantes v. Time, Inc.*, 464 F.2d 986 (8th Cir. 1972); *Bursey v. United States*, 466 F.2d 1059, 1090-92 (9th Cir. 1972) (on rehearing after *Branzburg*); *Democratic National Committee v. McCord*, *In re Bernstein*, 356 F. Supp. 1394 (D.D.C. 1973); *Linsey v. Kelman* (D. Conn., Mar. 20, 1973) (N.Y. Times, March 21, 1973, p. 19); see also *Carey v. Hume*, No. 71-1736 (D.C. Cir. Jan. 28, 1974); *United States v. Liddy*, *In re Times Mirror Co.*, 354 F. Supp. 208 (D.D.C. 1973).

and that the exercise of that authority was constitutionally permissible. Zemel asserted that he had a right to travel to Cuba to acquaint himself with conditions there and with the effects of American foreign policy there. The Court rejected this claim on the ground of "the weightiest considerations of national security", citing the 1962 Cuba Missile Crisis, which preceded by less than two months the filing of Zemel's complaint. 381 U.S., at 16. *Zemel* is distinguishable in several important respects from the instant case. First, it involved foreign policy, a matter in which the courts are particularly inexpert, and in which, under the political question doctrine, they have traditionally shown unique deference to executive decisions. See, e.g., *Chicago & S. Air Lines v. Waterman S. S. Corp.*, 333 U.S. 103, 111-12 (1948). Second, Zemel did not assert a right to engage in communicative or expressive activity, but only a right to "acquaint" himself with conditions abroad. Thus, the Court could properly say that what was involved was not a restriction of speech, but "an inhibition of action." 381 U.S., at 16. In the instant case, respondents assert not a general right to observe conditions abroad, but a specific right to communicate by speech with specified persons who happen to be, through government compulsion, physically confined to a particular place. The right asserted here is a right to engage in pure speech. Third, in *Zemel* the Court rejected the claim of an "unrestrained right to gather information". 381 U.S., at 17. No such claim is made in the instant case. The right asserted here is buffeted on all sides by qualifications and restrictions. Respondents recognize that press interviews may be subject to reasonable regulations as to time, place and manner. They make no claim of a right to conduct interviews

during times of institutional emergency. They acknowledge, as did the courts below, that interviews with certain inmates may be denied because of the past history of those inmates. Finally, whereas *Zemel* involved a virtually total exclusion of all Americans from Cuba, the federal prisons admit thousands upon thousands of visitors and permit thousands upon thousands of interviews every year. Federal prisons are not little Cubas, walled off from all Americans. The ban on interviews challenged in this case is directed exclusively against the press.

The decision in the instant case must, therefore, turn on the nature and severity of § 1220.1A's restriction on news gathering and on the nature and strength of the Government's interest in imposing a restraint as broad as that of § 1220.1A. Here, as in *Healy v. James*, 408 U.S. 169 (1972), what is at issue is a prior restraint. The test applied there by the Court *per* Mr. Justice Powell is equally applicable here:

"While a college has a legitimate interest in preventing disruption on the campus, which under circumstances requiring the safeguarding of that interest may justify such a restraint, a 'heavy burden' rests on the college to demonstrate the appropriateness of that action." 408 U.S., at 184.

Policy Statement 1220.1A flatly and totally prohibits newsmen from interviewing any of the more than 21,000 prison inmates under the control of the United States Bureau of Prisons. The prohibition of interviews is an assertion of governmental power to prevent two willing persons—the journalist/interviewer and the prisoner/interviewee—from communicating in an interview for the purpose of news gathering, a consti-

tutionally protected activity. *Cf. Shelley v. Kraemer*, 334 U.S. 1 (1948).

The assertion of this power in the Policy Statement is virtually unique since only as to persons within its physical control does government have effective power to prevent interviews from taking place. And the persons within the physical control of the government are those incarcerated or housed in government institutions, and in some circumstances the military.

Accordingly, the First Amendment claim in this case is extremely narrow: a claim that two people who want to talk to one another for the purpose of news gathering without being overheard have a right to do so; and that the fact that one of them is a prison inmate does not negate the right, but merely means that the interview may be subjected to reasonable prison regulations as to time, place, and manner, and may be denied altogether in certain narrowly defined circumstances. Respondents fully recognize that in a prison as in a school, First Amendment rights must be "applied in light of the . . . environment." *Tinker v. Des Moines Independent Community Sch. Dist.*, 393 U.S. 503, 506 (1969). Throughout this litigation, respondents have expressed their willingness to abide by the ordinary rules governing inmate interviews with lawyers and other visitors. *Cf. Healy v. James*, 408 U.S. 169, 195 (1972) (Burger, C. J., concurring).

It should be emphasized what this case does not involve. It does not involve any claim of press access to any person who does not wish to be interviewed, and thus it does not raise any question of an invasion of privacy. Contrast *Commonwealth v. Wiseman*, 249 N.E. 2d 610 (Mass.), cert. denied, 399 U.S. 960 (1970).

("Titticut Follies"). It does not involve any assertion of rights with respect to any government officials, government meetings or government documents. It does not involve any interference with the conduct of a trial. Contrast *Estes v. Texas*, 381 U.S. 532, 539-40 (1965). It does not involve a claim of access to areas where exclusion of the entire public is required by "the weightiest considerations of national security." Contrast *Zemel v. Rusk*, 381 U.S. 1, 16 (1965). Nor does it involve resistance to a subpoena from an official body such as a court or grand jury. Contrast *Branzburg v. Hayes*, 408 U.S. 665 (1972).

Further, there is no claim in this case of a First Amendment right to enter prisons at all times and under all circumstances. It is undisputed that the special nature of prisons justifies the establishment of reasonable regulations governing the time, place and manner in which interviews with prisoners may take place. And this case presents no question as to the power of prison authorities to prohibit interviews during riots or other institutional emergencies, or to prohibit interviews with inmates who are dangerous or who present other specific problems.<sup>21</sup>

What respondents do claim is the same right to interview inmates that is enjoyed by relatives, friends, lawyers, clergymen, public officials, former and pro-

<sup>21</sup> The Government asks whether respondents assert a right to take television cameras into prison. Brief for Petitioners 51. The answer—obviously—is no. This Court has already recognized that television cameras present problems wholly unique to that medium, which are not presented by a newsman with pad and pencil. See *Estes v. Texas*, 381 U.S. 532 (1965). Some prison systems do admit television cameras to their institutions, e.g., App. 128, but there is no claim that they are constitutionally required to do so.



spective employers, and other persons who are permitted by the Bureau of Prisons to have private conversations in depth with inmates. App. 630-36, 647. If all these categories of persons are permitted to interview inmates during normal times and subject to reasonable regulations, there is no justification for excluding the press.

The question presented in this case can be decided very narrowly, without any necessity to lay down even the general outline of the First Amendment right to gather news. All that the Court need decide is that where the Government permits a broad segment of the public to have private interviews with competent persons within its custody subject to reasonable regulations as to time, place and manner, it may not exclude the press from interviewing such persons who give their consent, subject to the same regulations, except upon a showing of a compelling interest for such exclusion, and that the ordinary circumstances of a prison do not create such a compelling interest.

### **III. POLICY STATEMENT 1220.1A DIRECTLY AND SEVERELY RESTRICTS NEWS GATHERING BY DENYING THE PRESS THE USE OF A CRITICAL NEWS GATHERING METHOD.**

The gist of the First Amendment claim in this case is the critical need for personal interviews with willing prisoners in order to gather news about prisons effectively, accurately and reliably. That need was demonstrated in the testimony below. See, pp. 9-17, *supra*. It was recognized in the District Court's Findings 20-28, Pet. 50-57, which were affirmed by the Court of Appeals, Supp. Pet. 12-15. Many of the themes reflected in these detailed findings have been emphasized by this Court in other contexts.

In *Kleindienst v. Mandel*, 408 U.S. 753 (1972), the Government had refused entry into this country to Mandel, an alien professor who had planned to lecture at various American universities. Mandel and several of his intended listeners challenged under the First Amendment the denial of a visa to him. The Government argued that Mandel's exclusion involved no restraint on the First Amendment right of citizens to receive information because alternative forms of communication existed. The Court, *per* Mr. Justice Blackmun, rejected that contention:

"The Government also suggests that the First Amendment is inapplicable because appellees have free access to Mandel's ideas through his books and speeches, and because 'technological developments, such as tapes or telephone hook-ups readily supplant his physical presence. This argument overlooks what may be particular qualities inherent in sustained, face-to-face debate, discussion, and questioning. . . . [W]e are loath to hold on this record that existence of other alternatives extinguishes altogether any constitutional interest on the part of appellees in this particular form of access.'" 408 U.S., at 765.<sup>22</sup>

Prior statements of this Court also support the conclusion that, for purposes of news gathering, letters are no substitute for interviews. However prompt a prison mail service may be, mail is in most cases inherently too slow to permit adequate and timely coverage of fast-breaking news events. This Court has recognized that the interest in publication of news in a *timely*

<sup>22</sup> The Court nevertheless upheld the exclusion on the ground that the Government's plenary power to exclude aliens barred courts from looking behind a decision to exclude or weighing it against First Amendment claims.

fashion is constitutionally protected, and that delay may be fatal to a story on fast-breaking events. See *New York Times Co. v. United States*, 403 U.S. 942 (1971) (granting of certiorari and stay of mandate, and order for greatly expedited hearing in this Court); *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 157 (1967) (opinion of Harlan, J., joined by Clark, Stewart & Fortas, J. J.) (suggested distinction between "hot news" and other news). Moreover, this Court has recognized that prison inmates are not apt to be experienced letter writers. "Jails and penitentiaries include among their inmates a high percentage of persons who are totally or functionally illiterate, whose educational attainments are slight, and whose intelligence is limited." *Johnson v. Avery*, 393 U.S. 483, 487 (1969).<sup>23</sup> See also *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970), where the Court pointed out the inadequacy of relying on written statements by welfare recipients:

"Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. Moreover, written submissions do not afford the flexibility of oral presentations. . . . Particularly where credibility and veracity are at issue, . . . written submissions are a wholly unsatisfactory basis for decision."

Moreover, it is obvious that the amount of information an inmate can communicate in, say, an hour-long interview vastly exceeds what he can express in a letter of reasonable length.

<sup>23</sup> The Chief Justice has observed, "The percentage of inmates in all institutions who cannot read or write is staggering." W. Burger, Remarks to the National Conference on Corrections, p. 10 (Williamsburg, Va., Dec. 7, 1971).

The Government has not seriously challenged the critical importance of face-to-face interviews for the purpose of gathering information. It offered no testimony on this issue below. It does not ask the FBI to restrict its investigative techniques to letters, group interviews, walking tours, and the like.

The Government does point out, as did the courts below, the undisputed fact that under Policy Statement 1220.1A newsmen are able to gather some information about federal prisons. But it is also undisputed on the record that much critical information can be obtained only through face-to-face private interviews in depth. See pp. 12-14, *supra*. The testimony of Arthur Liman on this point was particularly detailed and persuasive.

The assertion of a right to interview in this case does not reflect merely the idle preference of newsmen. It reflects a necessity inherent in any situation where one person seeks to obtain personal impressions and similar information from another person. A newsman gathering news for a story has as much need to interview the sources of information as a detective trying to solve a crime or a lawyer trying to prepare a case. App. 363, 293.<sup>24</sup>

<sup>24</sup> Despite the strength of the press interest in interviewing inmates, the Government argues that the First Amendment does not even apply. Citing *Kleindienst v. Mandel*, 408 U.S. 753 (1972), it argues that the power of a prison official to exclude an American reporter from an American prison is as absolute and unreviewable as the power of the Attorney General to exclude an alien from the United States. See Brief for Petitioners 35. This argument is contrary to *Branzburg*, where the Court did engage in First Amendment analysis, and it is contrary to all the decisions cited in n. 19, *supra*. The argument is also a polite request for a return to the long discredited "hands off" doctrine, under which a prison inmate was regarded as a "slave of the state," and prison

#### IV. NO COMPELLING GOVERNMENTAL INTEREST SUPPORTS POLICY STATEMENT 1220.1A'S TOTAL BAN ON ALL PRESS INTERVIEWS WITH INMATES.

The principal argument advanced by the Government is that press interviews with inmates will endanger prison discipline and security. There is no doubt that the Government has a compelling interest in the security of its penal institutions. But however important prison security may be—and it is very important—it cannot be invoked to justify every restriction which may in some remote way protect security. Even national security may not be so relied upon. In *United States v. Robel*, 389 U.S. 258, 263 (1967), this Court stated, “[T]he phrase ‘war power’ cannot be invoked as a talismanic incantation to support any exercise of congressional power which can be brought within its ambit. ‘[E]ven the war power does not remove constitutional limitations safeguarding essential liberties.’ *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 426 (1934).” See also *New York Times Co. v. United States*, 403 U.S. 713 (1971). As the Court stated in *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 508 (1969), “[I]n our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.” See also *Police Department of Chicago v. Mosley*, 408 U.S. 92, 100-01 (1972).

In virtually every case where a prison regulation has been challenged on constitutional grounds, prison discipline and security have been invoked in its defense.

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officials were a law unto themselves and their actions immune from judicial review. See, e.g., *Ruffin v. Commonwealth*, 62 Va. 790 (1871). But it is far too late in the day to resurrect any such crabbed view of the reach of the Constitution. See cases discussed at pp. 49-50, *infra*, and cases cited at p. 39, *supra*.

On many such occasions, this Court has found the defense insufficient.

For example, in *Johnson v. Avery*, 393 U.S. 483 (1969), Tennessee sought to bar inmates from giving legal assistance to one another. The state urged that its ban was "justified as a part of [its] disciplinary administration of the prisons." 393 U.S., at 486. The Court acknowledged that "prison 'writ writers' like petitioner are sometimes a menace to prison discipline," 393 U.S., at 488, but it held that this factor was not sufficient to justify the total ban.

Similarly, in *Lee v. Washington*, 390 U.S. 333 (1968), the Court rejected an argument that racial segregation in prison was justified by the interests in discipline and security. The District Court had dealt with this issue:

"The only defense offered . . . is that the practice of racial segregation in penal facilities is a matter of routine prison security and discipline and is, therefore, not within the scope of permissible inquiry by the courts. . . . We recognize that there is merit in the contention that in some isolated instances prison security and discipline necessitates segregation of the races for a limited period. However, recognition of such instances does nothing to bolster the statutes or the general practice that requires or permits prison or jail officials to separate the races arbitrarily." 263 F. Supp. 327, 331 (M.D. Ala. 1966) (3-judge court) (footnote omitted).

This Court affirmed without extended discussion.

In *Haines v. Kerner*, 404 U.S. 519 (1971), the prisoner had sued for physical injuries resulting from prison disciplinary measures. The District Court had dismissed his complaint, and the Court of Appeals had

affirmed, "emphasizing that prison officials are vested with 'wide discretion' in disciplinary matters." 404 U.S., at 520. This Court reversed, holding: "Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner . . . are sufficient to call for the opportunity to offer supporting evidence." *Id.*

In *Cruz v. Beto*, 405 U.S. 319 (1972), the Court upheld a free exercise claim by a prisoner. The District Court had denied relief on the ground that the complaint presented a matter that should be left "to the sound discretion of prison administration." The District Court had also said, "Valid disciplinary and security reasons not known to this court may prevent the 'equality' of exercise of religious practices in prison." The Court of Appeals had affirmed. *See* 405 U.S., at 321. This Court reversed:

"We are not unmindful that prison officials must be accorded latitude in the administration of prison affairs, and that prisoners necessarily are subject to appropriate rules and regulations. But persons in prison, like other individuals, have [various constitutional rights]." 405 U.S., at 321-22.

*See also Jackson v. Bishop*, 404 F.2d 571 (8th Cir. 1968), (Blackmun, J.), where the court held unconstitutional "the primary disciplinary measure used in the Arkansas [prison] system."

In the instant case, as in previous cases involving alleged interference with prison discipline and security, the defense must be examined closely to determine whether it really supports the particular regulation at issue. Respondents submit that the order developed by the courts below fully protects whatever disciplinary



and security interests are involved. See pp. 68-70, *infra*. Beyond that, the question presented here is whether, in the light of experience as reflected in the record, press interviews pose such a significantly greater danger to prison discipline and security than do interviews with relatives, friends, lawyers, etc. that the Government may completely prohibit press interviews across the board while continuing to permit freely interviews with these other persons.

**A. The Experience of Numerous Prison Systems Demonstrates That There Is No Compelling Reason To Ban All Press-Inmate Interviews.**

The record shows that about half the prison systems in America have a policy that generally permits press interviews with inmates and denies them only in exceptional circumstances.<sup>25</sup> It also shows that the vast majority of prison systems permit press-inmate interviews in some circumstances as a matter of discretion. See pp. 22-23, *supra*. The Association of State correctional Administrators, a professional association of prison officials, has proposed that such interviews be permitted, as has the National Council on Crime and Delinquency. See Findings 57-58, Pet. 69-70; App. 570-72, 619.<sup>26</sup> Thus, the Federal Bureau of Prisons and Cali-

<sup>25</sup> Counsel for respondents wrote to every state and numerous local jurisdictions requesting a copy of their policy on press interviews with inmates and related materials. All the statements of policy received were offered into evidence. The District Court received into evidence only those statements of policy which had previously been established in written form.

<sup>26</sup> Since the guideline issued by the Association of State Correctional Administrators reflects the views of prison officials, it does not necessarily reflect an impartial or expert weighing of First Amendment interests. But it does make clear that from a correctional point of view there is no reason to exclude the press entirely from interviews with inmates.

ifornia are fighting a rearguard action in defense of a policy which the vast majority of correctional officials do not regard as necessary or even desirable from a correctional point of view.<sup>27</sup>

The record also contains detailed testimony on the experience of four jurisdictions ~~that have operated under policies essentially indistinguishable from the order developed by the courts below.~~ These jurisdictions are New York City, Massachusetts, Illinois and the District of Columbia.

In New York City, press-inmate interviews are freely permitted, except when interview facilities are congested, when there is an institutional emergency, and where the proposed interviewee has a history of disruptiveness. App. 126-27. The interviews are private and uncensored; App. 128. Commissioner Malcolm summed up New York's experience with this policy: "[W]e have had ample time to examine our track record . . . , and we haven't had any problems . . . ." App. 129. Commissioner Malcolm testified that press interviews had not in any way impeded the correctional process. App. 130. He also testified that press interviews had not produced big wheels:

"There are some prisoners in our institutions who are considered Big Wheels right along and they have been interviewed; and I don't think the wheel is any bigger now than it was before." *Id.*

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<sup>27</sup> California adopted its total ban because of legal, not correctional, considerations. Director Procunier prefers a case-by-case approach from a correctional point of view. App. 170-71. Director Carlson indicated that legal advice also played a role in his adoption of a total ban. App. 212.

Massachusetts has a similarly open policy. App. 323-24. Commissioner Boone testified on the basis of his experience with that policy:

“While we appreciate the fact that with an open policy you would have isolated instances of problems, as well as you do with a closed policy, I think you have more problems with a closed policy than you do with an open policy.” App. 326.

Illinois also has an open policy. App. 568, 529-37. Wardens at individual institutions have considerable discretion within the limits of a policy generally encouraging interviews. *Id.* Director Bensinger testified that his wardens are sufficiently knowledgeable about their institutions and prisoners to be able to tell whether a particular requested interview will cause security or other problems. App. 539. Although the policy has not worked perfectly, Director Bensinger testified, “Our feeling is that the . . . policy is working satisfactorily . . .” App. 540.

Finally, the District of Columbia has had no problems with its policy of permitting press interviews with inmates. App. 146.

There is no reason to believe that the federal prisons are more likely to experience serious problems from press interviews than are the many jurisdictions that freely permit them. See Finding 53, Pet. 67-68. Commissioner Boone, who spent 16 years with the federal prison system before becoming Commissioner at Lorton and then in Massachusetts, App. 322, testified that the federal system is more developed than state systems and thus is in a better position, from a correctional point of view, to implement a policy permitting press-inmate interviews. App. 323, 347-48. The federal prisons

also have a higher percentage of inmates committed for non-violent crimes than do state or local prisons. App. 595-96; see also App. 150-52, 617-18. Finally, the sentenced inmates in federal prisons who have been through diagnostic procedures are far easier to handle than the inmates held for trial in The Tombs and other penal institutions in New York City. App. 140.

In light of the evidence that numerous jurisdictions have successfully implemented a policy permitting press-inmate interviews, it cannot be said that the Federal Bureau of Prisons has a compelling interest in preventing all interviews.

**B. The "Big Wheel" Theory Does Not Justify a Total Ban on Press Interviews.**

The Government advances in this Court as it did below the theory that interviews with all inmates should be banned because an interview with one of the tiny fraction of inmates who are big wheels might enhance the status of a negative influence within the prison population. Brief for Petitioners 17-23.

There was unanimity among the correctional officials who testified on the point that the serious trouble-makers in prison are 5-10% of the total inmate population. See App. 341-42, 372, 404, 431. The "negative leaders" or big wheels are a portion of this percentage. As the Court of Appeals pointed out, whatever interest there may be in preventing interviews with big wheels, the "relatively isolated evil" they present cannot justify a ban on interviews with all inmates, regardless of their behavioral history in prison and other individual characteristics.

Indeed, the order developed by the courts below permits the Bureau to deny interviews with big wheels:

an interview may be denied, *inter alia*, "where it is the judgment of the administrator directly concerned, based on . . . the demonstrated behavior of the inmate . . . , that the interview presents a serious risk of administrative or disciplinary problems." Supp. Pet 26.<sup>28</sup>

The Government responds that "it is impossible with any precision to predict the behavior of inmates." Brief for Petitioners 22. Certainly, the prediction of human behavior is not a mathematical science, and errors are made. But the record shows that prison administrators are well able to identify the big wheels among their inmates. Warden Alldredge from the federal system, Director Wainwright from Florida and Director Bensinger of Illinois all testified that the identification can be made. App. 401, 406, 539.

Indeed, because of the resources available to it, the Federal Bureau of Prisons is in a particularly good position to make predictions about inmate behavior. Within the first few weeks of commitment to federal prison, all inmates receive a thorough evaluation, including intensive diagnostic studies. See Defendants' Exhibit 11, p. 7 (Federal Bureau of Prisons Biennial Report 1970-71). The results of this evaluation are available to prison administrators and are the basis for many significant decisions as to the handling of inmates.

The Government further argues that a big wheel will engage in disruptive activities for the purpose of attracting press attention. Brief for Petitioners 19. But the disruptive inmate is precisely the one with whom an interview may be denied under the Court of

<sup>28</sup> The order is discussed further at pp. 68-70, *infra*.

Appeals' order. Therefore, the order creates absolutely no incentive for disruption.

The Government also points out the obvious undesirability of allowing press interviews during the height of a riot. Brief for Petitioners 20-21. Respondents do not claim any right to interview during an institutional emergency, and the Bureau of Prisons has not asserted that any emergency was present in this case. Moreover, respondents' witness, Arthur Liman, commented on the very passage from the Attica Report quoted by the Government at pp. 20-21 of its brief, App. 300-01, and compared it to the Attica Commission's strong recommendation of continuous press scrutiny of prisons:

"We felt strongly that the time for the press to exercise its function was not in the middle of an uprising. On the other hand, we feel equally strongly that the press had an essential role to develop the facts of what the conditions in the prison were like, and to do it at a time and in a manner that would not simply evoke rhetoric. To my way of thinking, the only way that can be done is by private interviews where people are not under the pressure of making speeches to please their fellow-inmates or the institutional administrators." App. 301.

Finally, the Government contends that "[i]nterviews create an incentive for newsworthy rhetoric . . . ." Brief for Petitioners 17. Plainly, if the Government opposes press-inmate interviews in order to stamp out "rhetoric" that is newsworthy, it is baldly violating the First Amendment. *Near v. Minnesota*, 283 U.S. 697 (1931); *Healy v. James*, 408 U.S. 169, 187-88 (1972).

**C. The Record Does Not Show That Press Interviews Cause Prison Disturbances.**

There was testimony concerning disturbances at Terre Haute penitentiary, and at prisons in Iowa, Florida and Illinois. See App. 373-88, 407-14, 417-18, 421-22, 431-38, 542. The Government asks this Court to find that those disturbances were caused by interviews between inmates and outsiders, though both the lower courts declined to make such a finding. The evidence does not support the Government's interpretation.

The disturbance at Terre Haute was a work stoppage, which Warden Alldredge, who had been transferred from Lewisburg, described as "[t]otally nonviolent." App. 385. This disturbance was similar to those at Lewisburg and Danbury, and there has been no suggestion that either of them was caused by interviews. Warden Alldredge testified that George Michie, an aide to a Congressman, interviewed four inmates. Mr. Michie was then quoted in an Associated Press story by Tom Sedgwick, which appeared in several newspapers. Thereafter, the work stoppage occurred. Warden Alldredge did *not* testify that the work stoppage was caused by Mr. Michie's interviews. Rather, he said, "[i]n my judgment the work stoppage was caused by the press release by Mr. Seppey (phonetic spelling) of the Associated Press . . . ." App. 385. The critical part of the Associated Press story appears at App. 379-80. It contains no details of the interviews with inmates; no inmates are even mentioned. This particular story could have been written without interviews. It thus is evident that interviews had nothing to do with the work stoppage at Terre Haute.



The "disturbance" in the Iowa State Penitentiary was an increase in tensions at an institution already under a general lockup. During this period of institutional emergency, the warden denied permission for press interviews. The Governor over-ruled him, the interviews were held, newspaper stories based on the interviews were published, they were read by the inmates, with a resulting increase in tensions, though, again no violence. App. 433-36. Officials in Iowa do not regard this incident as so serious as to warrant banning press interviews: Iowa continues to permit them, and some have been held since the incident. App. 441. Moreover, under the order developed below there would clearly be no right to an interview in the Iowa circumstances—an institutional emergency and a judgment by the warden on the scene that interviews should not be held. The District Court was quite clear on this point: "My opinion wouldn't require this kind of an interview. . . . I thought I made absolutely clear in my decision that discretion was going to remain in the wardens to determine some of these matters on an individual basis." <sup>28</sup>

The disturbance at Florida State Prison was the one violent incident about which there was testimony. Press interviews took place at the prison in September and October, 1970, over the objection of the Director of Corrections, who was concerned over conditions at the

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<sup>28</sup> The Government contends that there is a danger that the judgments of federal wardens will be overruled by "higher officials" who, in the face of importunings from the press, will be insensitive to the needs of prison security. Brief for Petitioners 27-28. Respondents respectfully submit that the responsible higher officials—the Attorney General of the United States and the Director of the United States Bureau of Prisons—can be relied upon not to jeopardize prison security.

prison. As in Iowa, the correctional official was overruled by a political superior.<sup>29</sup> The disturbance began in mid-February, 1971, several months later. App. 407-12. Thus, any causal connection was highly tenuous. What intervened were newspaper articles describing sub-standard conditions at the prison, and these led to several investigations. *Id.* Director Wainwright acknowledged that the prison had racial tensions and numerous other problems, App. 418. Like Warden Alldredge and Warden Brewer, he did not attribute the disturbance to the press interviews:

"As I said, we continued to have problems. We were tremendously overcrowded, the repetition of the articles printed of course kept the inmates stirred up considerably more than they would have been otherwise. The numerous investigations . . . caused turmoil in the institution and the morale of the inmates was down, finally resulted in a serious disturbance at the institution." App. 412; *see also* App. 419.

The incident in Illinois also resulted from a newspaper article rather than from an interview. Director Bensinger testified that an interview with an inmate who was Deputy Prime Minister of the Black Panther Party led to an "inflammatory" article, which in turn "caused considerable tension on the grounds of the institution, and considerable problems with our staff, and had a number of inaccuracies." App. 542. There was no violence, and the inmate was transferred to another institution. *Id.* Illinois, like Iowa, continues to permit press interviews. App. 540.

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<sup>29</sup> Thus the interviews would not have been required under the order developed by the courts below.

In all these instances, the testimony focused on "inflammatory" newspaper stories rather than on press interviews, as the source of the problem. Therefore, this testimony in no way supports a total ban on press interviews. Inflammatory articles have no dependence on press interviews. See App. 383-84. Nor do prison officials attempt to insulate inmates from "inflammatory" ideas: at Danbury, the inmates were permitted to watch the Attica uprising on television. App. 200. Finally, the argument that interviews should be banned because they lead to newspaper articles with objectionable content is an argument for unconstitutional prior restraint. *Near v. Minnesota*, 283 U.S. 697 (1931); *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971); *Healy v. James*, 408 U.S. 169, 184 (1972).

**D. No Interest in Uniformity Justifies a Total Ban on Press Interviews.**

The claim that Policy Statement 1220.1A is justified as part of a policy of treating all prisoners alike is untenable. As Director Carlson made quite clear, the Federal Bureau of Prisons seeks uniformity only to the extent that it disregards the socio-economic class, prior position, race, and religion of inmates. The Bureau does not seek uniformity in dealing with the correctional needs of offenders. Moreover, the Bureau's disciplinary policy provides wardens with broad discretion. App. 213, 453.

Implementation of a discretionary press-inmate interview policy is consistent with these goals. No differentiation in press-inmate interview decisions should ever be based on the race, religion or economic class of the inmate. Only when disciplinary problems are likely to develop should interviews be denied, and such a denial is entirely consistent with the Bureau's present

flexible approach with respect to discipline and correctional needs generally.

To the extent that the Bureau's concern for uniformity is based on its desire to have inmates treated similarly as they are transferred from one institution to another, the order of the courts below is entirely consistent with this goal. The Court of Appeals emphasized that the order did not require differentiation on an institutional basis when it declared:

"This misses the thrust of the order, which is to require the Bureau to make distinctions that are based on the individualized requirements of a particular institution at a particular time, as well as on the personal attributes of the inmate seeking to participate in the interview. Compliance with the order should not generate significant discontent based on the application of vastly different standards at different institutions, for the general standard to be applied in all facilities is the same." Supp. Pet. 20.

Any differentiation in treatment at different institutions that does occur will be caused by wardens administering the press-inmate interview policy differently, or by greater security concerns in some institutions due to a larger number of inmates with a history of behavioral problems or a history of institutional disturbances. As to the first case, the Bureau already gives wardens discretion in meeting correctional needs and in implementing disciplinary and visitation regulations. As Professor Mattick pointed out, against this background a discretionary press-interview policy will not significantly add to institutional variations. App. 596-97. In the second case, an inmate transferred to an institution with greater security problems will always experience closer disciplinary controls, and the

impact of a policy which more frequently denies press-inmate interviews cannot be considered significant in view of the other restrictions enforced. Thus, it cannot seriously be argued that the order of the courts below interferes in any way with a legitimate Bureau concern for uniformity.

**E. Property Law Concepts Do Not Justify a Total Ban on Press Interviews.**

The Government argues that because prisons' physical plants are not freely open to the public they are analogous to private property, from which the press may be entirely excluded. Brief for Petitioners 45-46. However, a newsman seeking to interview a prisoner has no particular desire to enter prison property. If the Bureau of Prisons would permit the interview to be held elsewhere, he would have no objection. But, as the District Court pointed out, "The sources of news are solely in the prisons. No alternative satisfactory sources are available, and the press claims its proper right of access." 357 F.Supp., at 783.

Moreover, prison property is public, not private, property. And it is public property that customarily is open to large segments of the public:

"Prisons are not walled off sanctuaries like the Pentagon Map Room or the Justices' Conference table at the Supreme Court. Prisons are villages in themselves. Families, lawyers, congressmen, clergymen and friends visit in public interview space provided. Newspapers, magazines, radio and television programs pour in incessantly throughout the day. Within the prison walls there is illness, drug distribution, prostitution and many other matters of everyday occurrence on the outside. Crimes are committed and punishments imposed during incarceration. Inmates are of varying

ages, political persuasions and background. Some prisoners come and go on furlough or compassionate leave. Mail is substantially uncensored. Local communities are encouraged to participate in the affairs of these institutions by rendering neighborly family counseling and support. Indeed, halfway houses, vocational and educational programs, and other community ventures include prisoners serving time. . . . It is wholly inconsistent with an open democratic society to allow the state to seal off from press scrutiny thousands of men and women who have been charged with or found to have committed criminal offenses." 357 F. Supp., at 782-83.

The Government's citation of *Adderly v. Florida*, 385 U.S. 39 (1966), and *Cox v. Louisiana*, 379 U.S. 559 (1965), is inapt because both cases involved disruptive demonstrations. Respondents have no desire and claim no right to demonstrate on prison property or to disrupt prison operations. They seek to enter prisons on the same basis that inmates' relatives, friends, lawyers, clergymen and others enter for the purpose of interviews, and they are willing to abide by the same rules that govern other prison visitors. Cf. *Healy v. James*, 408 U.S. 169, 195 (1972) (Burger, C.J., concurring). Moreover, here, as in *Amalgamated Food Employees v. Logan Valley Plaza*, 391 U.S. 308 (1968), the purpose of the entry onto the property in question is directly related to the normal use of the property. Newsmen who enter prisons for interviews will no more be "trespassers" than are relatives, friends, lawyers, clergymen and others who enter for the same purpose.

Finally, when weighing property rights against the exercise of First Amendment rights, one must "remain mindful of the fact that the latter occupy a preferred

position." *Marsh v. Alabama*, 326 U.S. 501, 509 (1946), a "company town" case, but expressly followed in the companion case of *Tucker v. Texas*, 326 U.S. 517 (1946), which involved federally owned real property. See also, e.g., *Flower v. United States*, 407 U.S. 197 (1972) (military base); *Healy v. James*, 408 U.S. 169 (1972) (state college).

#### **F. No Other Considerations Justify a Total Ban on Press Interviews.**

1. *Administrative Burdens.* Overwhelming evidence established that no significant administrative burdens would be created by press interviews with inmates. See Finding 48, Pet. 65-66. The Federal Bureau of Prisons permits interviews by counsel, clergy, family, and friends of inmates, presumably without unreasonable administrative burdens. App. 394; Brief for Petitioners 37. Federal penitentiaries are equipped to facilitate large numbers of interviews at any one time, and these facilities are frequently not utilized to their full capacity. App. 395-96. Corrections officials from states which permit press-inmate interviews have testified that no significant administrative burdens have resulted from this policy. App. 131, 332.

Furthermore, as the Court of Appeals pointed out, to the extent that any undue administrative burdens *might* occur as a result of a press-inmate interview policy, they can be entirely eliminated by reasonable regulation of the frequency and duration of interviews:

"The Bureau advanced its administrative needs as one justification for the imposition of its total interview ban. This, of course, is a legitimate concern that can be accommodated by an individualized standard for determining when to grant interviews. However, this problem is no different from that posed by the administration of other



visitation privileges and can be dealt with in a similar manner. If an institution is besieged with a staggering number of requests to interview an inmate, it can legitimately devise some means of restricting press interviews to manageable proportions. For example, prison administrators might wish to impose a ceiling on the number of interviews in which an individual inmate could participate and allow the inmate himself to choose the particular reporters to whom they will grant interviews." Supp. Pet. 22, n. 20.

2. *Newsmen as Risks to Prison Security.* The argument that newsmen themselves jeopardize prison security provides no justification for an outright ban on all press-inmate interviews, and was firmly rejected by the District Court below, which found:

"Security procedures used by prison administrators to prevent the introduction of contraband by friends, relatives, attorneys and other visitors to prisoners are readily applicable to newsmen entering prisons to interview inmates, without any loss of effectiveness. . . . Members of the press are no more likely to introduce contraband than are lawyers, friends, relatives, or other visitors. . . . Members of the press are no more likely to participate in escape plans, to solicit offenses, or to make other unlawful or improper communications with inmates than are lawyers, friends, relatives, or other visitors." Finding 47, Pet. 65.

Other courts confronted with the contention that newsmen pose risks to prison security have also rejected this argument. See *Houston Chronicle Pub. Co. v. Kleindienst*, 364 F. Supp. 719, 729 (S.D. Tex. 1973), app. dismissed, No. 73-3590 (5th Cir. Jan. 11, 1974); *Hillery v. Procunier*, 364 F. Supp. 196, 203 (N.D. Cal. 1973), prob. jur. noted, 42 U.S.L.W. 3386 (Jan. 7, 1974), and sub. nom. *Pell v. Procunier*, 42 U.S.L.W. 3422 (Jan 21, 1974).

## V. A PRISONERS' RIGHT TO BE INTERVIEWED IS NO SUBSTITUTE FOR A PRESS RIGHT TO INTERVIEW

In the companion cases of *Procunier v. Hillery*, No. 73-754, and *Pell v. Procunier*, No. 73-918, the District Court for the Northern District of California held that prisoners have a right to be interviewed by willing newsmen, but that newsmen have no right to interview willing prisoners.<sup>30</sup> The issue of a prisoner's right does not arise in the instant case because no prisoners are parties. However, because the cases have been consolidated, respondents address the issue whether a prisoners' right to be interviewed is an adequate alternative to a press right to interview. We submit that it is not.

If the only right to an interview is the prisoner's, he bears the full burden of initially asserting it, and of pressing it to final decision through the various layers of the correctional bureaucracy. Prison authorities have total control over prisoners' lives, and prisoners know it. Many inmates who may be willing to be interviewed may be unwilling or unable to take the initiative in requesting an interview or to appeal from one level of the official hierarchy to another.

The press is far more able to bear this burden. It is independent of prison authorities. It is in a better position to present reasons why in the public interest, and perhaps in the interest of the institution, the interview should be held. It has easier access to counsel to assist in asserting the right.

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<sup>30</sup> The distinction turned entirely on the court's reading of *Branzburg*, and not at all on any weighing of the respective press, public and correctional interests. The court's reading of *Branzburg* was erroneous for the reasons stated at pp. 36-39, *supra*. Thus there is no constitutional basis for recognizing a prisoner right but no press right.

Moreover, the press has the unique expertise, and is uniquely assigned the constitutional function, of determining what matters are newsworthy and what interviews are needed in order to inform the public. Prisoners are not likely to be able to make those judgments with objectivity or expertise.

Of course, a newsman desiring to interview a particular inmate could write to him suggesting that he request an interview. But this circuitous process introduces the delay and other problems accompanying any correspondence by mail with inmates, see pp. 11, 14-15, *supra*, which may be fatal to a news story. The risks of delay are compounded where, as is often the case, a newsman wishes to interview several inmates having knowledge about a particular matter. In that situation he would have to write to each of them, and rely on the ability of each to initiate and press forward a separate request to be interviewed by the reporter. To the extent that the separate requests are processed at different rates, the newsman will encounter delay and perhaps the substantial burden of having to travel several times to one of the out-of-the-way places where prisons tend to be located. By contrast, recognition of a newsman's right would permit a reporter to follow up his own requests to make sure that they were being processed with the greatest possible dispatch, and that they would not be separated in the order of priority.

Finally, as a matter of doctrine, the constitutional claims of one group should not be denied on the ground that the parallel claims of another group are being recognized. In particular, the First Amendment right of the public to be informed about prisons and the First Amendment right of the press to gather news about prisons are independent of any rights of prisoners to be interviewed. If prisoners themselves were

held to have *no* First Amendment rights, the public and press interests in information concerning them would remain, and the consequent First Amendment claims of public and press would be undiminished. Similarly, that inmates have a right to be interviewed by willing interviewers does not lessen the justification for recognizing the corresponding but independent rights of the public and the press, resting as they do on different foundations in First Amendment law.

#### **VI. THE COURT OF APPEALS' ORDER IS SOUND**

The Court of Appeals' order, differing only slightly from that of the District Court, grew out of the record made below, and is responsive to every legitimate concern put forward by the Government. On the remand, the Court of Appeals expressly directed the District Court to consider the feasibility of vesting discretion in prison administrators. See 477 F.2d, at 1169. The District Court received considerable evidence on this point, and made detailed findings. See Findings 55-60, Pet. 69-71. Thus the order developed below is the product of a very careful process of decision.

The order provides that interviews between a member of the press and an inmate may be denied

"only where it is the judgment of the administrator directly concerned, based on either the demonstrated behavior of the inmate, or special conditions existing at the institution at the time the interview is requested, or both, that the interview presents a serious risk of administrative or disciplinary problems." Supp. Pet. 26.

The order provides for decisions on interviews on a case-by-case basis, rather than by broad absolute fiat. This approach is consistent with the views expressed by Director Procunier of California, App. 170-71, and the

prison officials from Massachusetts, Illinois, New York City and the District of Columbia, see pp. 52-53, *supra*. It also reflects the approach recommended by the Association of State Correctional Administrators, Finding 57, Pet. 69. Finally, a case-by-case approach accords with this Court's preferred method of deciding questions of First Amendment rights. See, e.g., *Police Department of Chicago v. Mosley*, 408 U.S. 92, 100-01 (1972) ("predictions about imminent disruption from picketing involve judgments appropriately made on an individual basis, not by means of broad classifications"); *Branzburg v. Hayes*, 408 U.S. 665, 710 (1972) (Powell, J., concurring).

The order vests the decision-making power in the prison administrator on the scene. The warden of a prison is an experienced senior correctional official. The record shows that he is fully equipped to make the necessary decision. See p. 55, *supra*.

The order provides a clear standard for objective decision, which is based on the testimony of correctional officials. The warden is directed to consider the conditions prevailing at his institution and the behavioral record of the inmate sought to be interviewed, and on that basis to decide whether the interview presents a serious risk of administrative or disciplinary problems. The warden is not required to make a hairline judgment or to offer proof to mathematical certainty. He is required to assess a risk on the basis of his experience and sound judgment. If he finds it to be serious, he may deny the requested interview.<sup>31</sup>

<sup>31</sup> The order does not articulate all the grounds which, as a matter of common sense, may justify the denial of an interview. Thus, an interview may be denied temporarily if the interview facilities are congested. A particular reporter may be denied an interview if there is substantial reason to believe that he will violate prison rules. Cf. *Healy v. James*, 408 U.S. 169 (1972).

The Government argues that wardens will inevitably abuse their discretion by permitting or denying interviews on the basis of whether they approve of what the inmate will say and what the newsman will publish. Brief for Petitioners 23-24. There is some irony in the Solicitor General presuming that government officials will abuse their discretion and in respondents having to defend them. This record, at least, contains no evidence whatever that suggests that correctional officials can not or will not properly implement the kind of order developed by the courts below. Prison officials throughout the Nation successfully administer policies of just this sort. Indeed, the wardens of federal prisons already exercise broad discretion with respect to inmate discipline, App. 212-13, and other matters. There is no reason to think they are more likely to abuse discretion over interviews than the broad discretion they already have.

Finally, the Court of Appeals' order properly reflects the weight of First Amendment values. It establishes a presumption in favor of interviews, which is rebutted upon a showing of special need to deny a particular interview. The permissible basis for denial is narrowly and precisely delineated so as to authorize the least restriction upon First Amendment interests while fully protecting compelling governmental interests. See cases cited at p. 39, *supra*.<sup>32</sup>

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<sup>32</sup> The Government notes that the District Judge said during a colloquy with Director Carlson: "You wouldn't be required to permit any interviews in maximum security institutions." Brief for Petitioners 31, n. 7. Respondents submit that the District Judge misspoke himself. The order, as issued by the District Court and modified by the Court of Appeals, makes no exception for maximum security institutions. See the Court of Appeals' opinion at Sup. Pet. 20.

**CONCLUSION**

United States Parole Board Chairman Maurice H. Sigler recently stated to a group of correctional officials: "So far, we have been able to live with the rulings of the courts. They haven't brought about the disastrous consequences some of us have predicted. Instead, the effect of the courts' new interest in corrections has been beneficial." M. Sigler, "A New Partnership in Corrections," (Address before the 102d Congress of the American Correctional Association, Aug. 21, 1972). In the long run, a decision for respondents in this case will also be beneficial to corrections. For this and the other foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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**Certificate of Service**

I hereby certify that three printed copies of the foregoing Brief for the Respondents were hand-delivered, this 8th day of April, 1974, to:

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Department of Justice  
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Washington, D.C. 20530

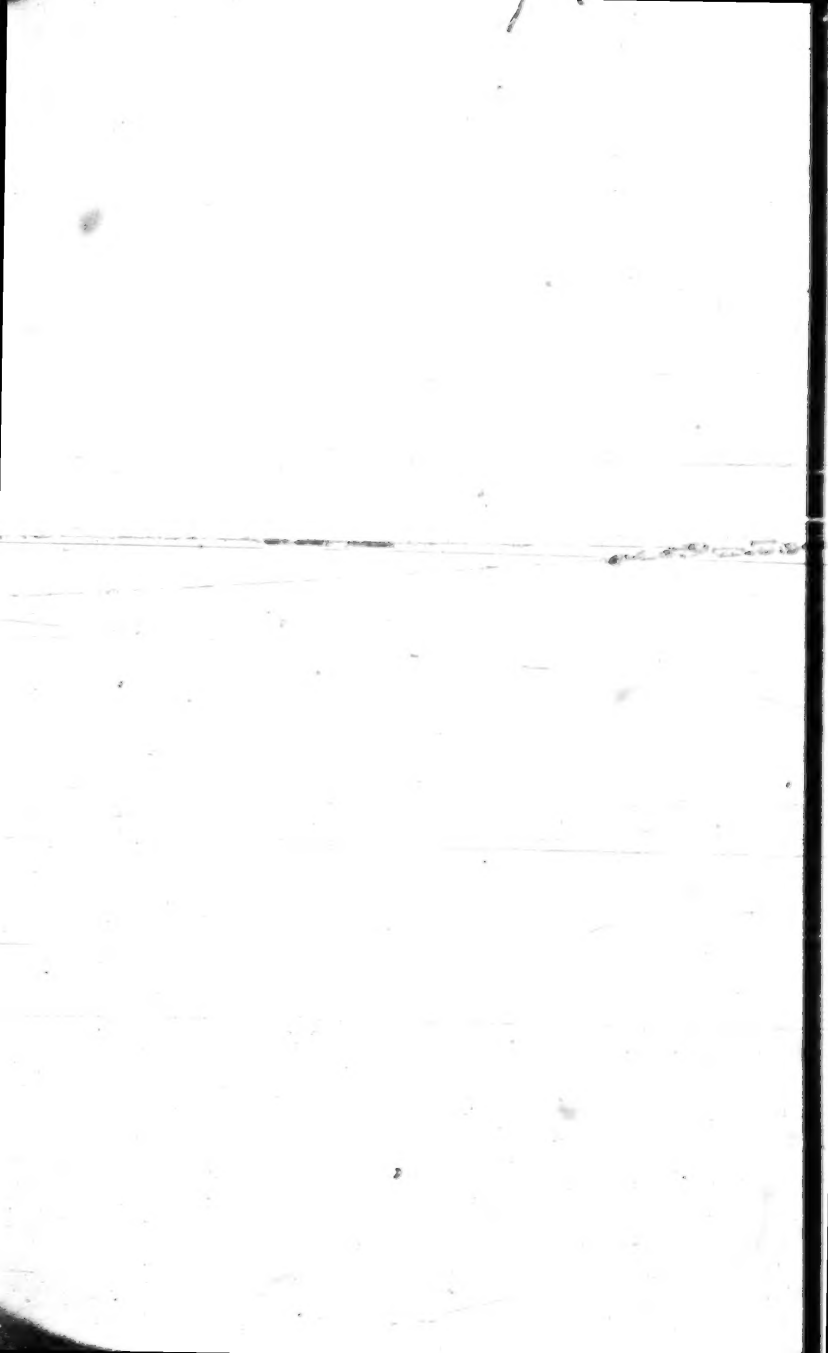
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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1973

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No. 73-1265

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WILLIAM B. SAXBE, Attorney General of the  
United States, and NORMAN A. CARLSON,  
Director, United States Bureau of Prisons,

*Petitioners,*

v.

THE WASHINGTON POST CO. and  
BEN H. BAGDIKIAN,

*Respondents.*

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On Writ of Certiorari to the  
United States Court of Appeals  
for the District of Columbia Circuit

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**BRIEF FOR THE REPORTERS COMMITTEE  
FOR FREEDOM OF THE PRESS  
LEGAL DEFENSE AND RESEARCH FUND  
AS AMICUS CURIAE**

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**INTEREST OF THE AMICUS**

This brief amicus curiae is submitted, with the consent of the parties (pp. 1a-2a, *infra*), on behalf of The Reporters Committee for Freedom of the Press Legal Defense and Research Fund. The Committee, as its name implies,

is made up of working news reporters and editors actively engaged in the business of gathering news for newspapers, magazines, television and radio.<sup>1</sup> Its purpose is to advance one of the great principles set out in the First Amendment: that government shall not impair the people's right to know by abridging the freedom of the press. )

In the light of that purpose, the Committee has a particular concern with the issues in this case and the related cases that are to be heard with it. The concern arises from the beliefs of Committee members and their colleagues in the news gathering trade who have had experience in trying to report on correctional institutions that there are many arbitrary governmental barriers to access by news gatherers to prisons and prisoners that impair the performance by the press of its function of informing the public.

The Committee, a group made up of working news persons, hopes that it can assist the Court by providing the perspective of its members and their colleagues of the working press on problems of covering correctional institutions.

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<sup>1</sup> The members of the Steering Committee are, from *Washington*, Elsie Carper, Washington Post; Lyle Denniston, Washington Star-News; Fred P. Graham, CBS News; Jack C. Landau, Newhouse Newspapers; Robert C. Maynard, Washington Post; Jack Nelson, Los Angeles Times; Eileen Shanahan, New York Times; Howard K. Smith, ABC News; from *New York*, Kenneth Auchincloss, Newsweek; Walter Cronkite, CBS News; Nat Hentoff, freelance; Anthony Lukas, freelance; Lemuel Tucker, ABC News; from *Boston*, John Kifner, New York Times; John Wood, Boston Globe; from *Chicago*, Joel Weisman, Chicago Sun-Times; from *Denver*, Linda Cayton, College Press Service; from *Miami*, Gene Miller, Miami Herald, and from *New Orleans*, Wilson F. Minor, Times-Picayune. The statement of affiliations is merely to identify the individual members and does not imply endorsement of the positions taken by the news media named.

The Committee is especially concerned that the Court should be aware that the prohibition of prisoner interviews is not the only barrier to effective prison coverage that the press confronts. The result of the restrictions has been to limit the facts available to the public about public institutions of the utmost social importance in which thousands are held as inmates by officials charged with responsibility for their rehabilitation. The decision in this case and its companions will necessarily affect subsequent decisions dealing with other aspects of press access to prisons.

## SUMMARY OF ARGUMENT

### I

Public interest in correctional institutions has probably never been at such a high level in the nation's history. The interest is wholly legitimate. Vast amounts of public funds are expended on our correctional institutions with what appears to be indifferent success at best. Yet, insistence on public accountability for what happens in these institutions is hampered by their relative inaccessibility. The information concerning prisons and prisoners that the citizen who would be well informed can obtain from the popular periodical press and radio and television is, for the most part, scanty indeed. Coverage is still limited pretty much to sporadic incidents of violence — riots, strikes, murders and assaults and escape attempts.

The blame for this condition lies in part with the press. The press has been slower in this area than in some others to depart from the habit of concentrating its coverage on dramatic manifestations of society gone awry, of which incidents of prison violence are prime examples. But much of the blame for the paucity of news concerning prisons

and prison life is attributable to official policies of which the regulations under challenge in this case and its companions are examples. A press that tried wholeheartedly to perform its high function of keeping the people informed about correctional institutions could not do so under present governmental restrictions.

## II

The regulation in issue here bans interviews between news gatherers and specified, willing subjects of interviews. It is illustrative of the pattern of restrictions that prevents the press from doing its appointed job with respect to prisons as effectively as it could.

The ban on interviews, which is all that is narrowly at issue here, is a most significant part of that pattern. Face-to-face interviews at the reporter's request are an important tool of his trade. No other means of obtaining news of events that are not heard or seen serves so well the interests of reliability and timeliness. The reporter cannot do his job if he merely sits back and awaits an inmate's request that he, the inmate, be interviewed. Written communications from inmates are not an adequate substitute for interviews. Nor are conversations with random inmates or with groups of inmates. Certainly the opportunity to talk with correctional officials or with recently released inmates is not sufficient.

## III

But the interview ban remains just one example of restriction of access to prisons and prisoners and should be seen as a part of the larger pattern. The experience of

the reporters with whom the Committee has been in touch and answers to a questionnaire that it circulated among 60 correctional administrators indicate that there are a number of such restrictions. The restrictions on access sometimes go beyond any conceivable needs related to the peculiar status of prisons and prisoners when they include budgetary and personnel records of the kind that are freely available from other public agencies. The problems posed to the press by the nature of the substantive restrictions on access to prisons and prisoners are aggravated by the inadequate or nonexistent procedures for requesting access.

In addition to having the opportunity for interviews with named and designated inmates, the press should have, within the limits of legitimate requirements of institutional security and performance of penal and rehabilitative functions and the protection of inmate privacy, the opportunity (1) to witness prison life, (2) to talk with random prisoners and groups of prisoners about prison life, (3) to observe the prison justice system in operation, (4) to study records of correctional systems — budgets, personnel records and the like — to the same extent that it can study records of other public agencies. Further, the press needs to know where to turn to obtain access to prisoners, prison personnel and prison records. Any particular barrier against access will of course have to be judged on its own merits and in the light of the justification offered for it. The record here demonstrates the lack of justification for the ban on interviews, and experience and common sense indicate that there is as little warrant for many or most of the other restrictions.

## IV

Within the prison the press serves a very traditional function: that of ensuring that the public is informed about what happens in places where, as a practical matter, not all members of the public can be. The significance of the specification of the freedom of the press, in addition to the freedom of speech, in the First Amendment lies in part in the recognition that merely to protect the press' freedom to speak is not enough. This Court has indicated that news gathering has its First Amendment protections. *Branzburg v. Hayes*, 408 U.S. 665, 707 (1972). To say that the news gathering function is to be protected against arbitrary restraints is not to say that the First Amendment guarantees "the press a constitutional right of special access to information not available to the public generally." *Id.* at 684. Rather, it is to say that, as a practical matter, some information properly available to the public can be obtained and delivered to the public only by the press, and in fulfilling this function the press has constitutional protection.

## ARGUMENT

I. CORRECTIONAL INSTITUTIONS ARE MAJOR PUBLIC INSTITUTIONS IN WHICH CITIZENS HAVE A LEGITIMATE INTEREST BUT WHICH ARE EFFECTIVELY SHIELDED FROM SUCH INTEREST.

More than 400,000 persons are inmates of the nation's approximately 4,500 jails, prisons and other detention and correctional institutions.<sup>2</sup> The turnover of this inmate

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<sup>2</sup> The inmate figure includes the inmates of federal and state prisons, public institutions for juveniles and locally administered jails

population is immense. In 1968, the last year for which the figures have been compiled, 120,000 persons were admitted to long-term state and federal correctional institutions and about the same number left. The total inmate population in such institutions at the end of that year was not quite 190,000.<sup>3</sup> Allowing for repeaters in prison admissions but taking account of the even greater turnover in jails, the figures indicate that the number of Americans now alive who have spent or will spend some time in jail or prison runs into the millions. Almost all of those who are committed, whether to an overnight stay in a local lockup or to a theoretical life sentence in maximum security, will return to society; the average length of a prison term, even after conviction of a serious crime, is less than two years.<sup>4</sup>

To maintain and support this vast system of correctional institutions, governments at all levels spent nearly \$2.5 billion in fiscal 1972. Nearly 200,000 persons are employed in the system.<sup>5</sup>

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2 (Cont'd) but excludes lockups and other facilities in which people are detained for less than 48 hours. See Department of Justice, *National Prisoner Statistics Bulletin*, No. 47, April 1972, p. 2 (state and federal prisons, 1970, 196,429); Department of Justice, *National Jail Census*, 1970, p. 2 (jails, 160,863); *Statistical Abstract of the United States*, 1973, p. 162 (juvenile institutions, 66,457).

<sup>3</sup> The figures are from *National Prisoner Statistics Bulletin*, *supra* at 2, 4.

<sup>4</sup> Department of Justice, *National Prisoner Statistics - State Prisoners: Admissions and Releases*, 1970, p. 4; *Statistical Abstract*, *supra* at 166.

<sup>5</sup> Department of Justice, *Expenditure and Employment Data for the Criminal Justice System*, 1971-72, p. 11, tables 2 (expenditures), 3 (employment).



As a consequence of the facts that these figures mirror, there is a legitimate public interest in and concern with what happens inside tax-supported prisons and jails. The level of that interest is probably higher today than at any time in the nation's history. In remarks prepared for presentation at a National Conference on Corrections in December 1971, President Nixon said, "At long last, this nation is coming to realize that the process of justice cannot end with the slamming shut of prison gates." Studies of prison reform, legislative hearings on prison reform and organizations devoted to prison reform have proliferated in recent years.

With all of this, however, the prison remains the least known side of the criminal justice system. The ordinary concerned citizen perceives only dimly that the correctional and penal institutions are, by his gross standards, falling far short of their goals. Their existence, the threat of incarceration that they represent, seems not to deter crime, and their rehabilitative efforts yield a fantastic rate of recidivism. President Nixon, in the same remarks quoted above, stated a commonplace when he said that "Our prisons are still colleges of crime, and not what they should be — the beginning of a way back to a productive life within the law."

Yet, despite the great public importance of penal and correctional institutions and their apparent failures, our concerned citizen is fairly helpless to know whom he should try to hold to account. The accountability of the administrators of the correctional system and the elected officials above them is enveloped in the mystery that tends to envelop all aspects of prison life. The penologists' studies, even the legislative hearings, are not of great assistance to the citizen who would like to be informed and who is

dependent on the daily newspaper and television and radio and popular magazines for most of what he knows about public affairs.

The page-one prison stories in his newspaper, the stories that will make the 6 o'clock television news programs, are generally stories of the dramatic, destructive and frequently tragic confrontations in which inmates seize the channels of communication to assert by their conduct and their words what they think of their life in prison. When there is no Attica or District of Columbia jail uprising or other major disturbance on page one, the occasional prison and jail stories on the inside pages are likely to be ephemeral stories of stabbings, escapes and attempted escapes. In short, the citizen who relies on the popular newspaper and periodical press or television for information about prisons does not receive a continuing, coherent account of prison affairs. Only such an account would enable him to make the kind of citizen's judgment that is appropriate about what should be done to ensure the most provident use of his taxes in supporting institutions that have such a significant effect on the quality of his life.

In part, the blame for this situation lies with the press. The Committee knows of but one major metropolitan newspaper in the entire country that has made the prisons of the jurisdiction in which it publishes a full-time beat for a reporter. There are sporadic pieces of serious prison reporting by various magazines, papers, networks and stations, but most prison reporting is of the kind that has been described — surface, immediate accounts of dramatic, violent events. The press is frequently as habit-ridden as other institutions. As this Court has been made aware by other briefs, when New York City opened its correctional

institutions to reporters, there was no rush to accept the invitation.<sup>6</sup>

But the press' habit of surface reporting of prison affairs is itself the product of years of frustration of efforts made to report in any but a surface way. The blame for the conditions that gave rise to the frustration do not lie with the press. In the reporting of other aspects of public affairs, the press has broken increasingly with traditions of finding news mainly in dramatic, overt manifestations of something amiss. The best of the contemporary press tries to tell a coherent, continuing story about legislative affairs, the doings of executive departments, science and medicine, the environment and, it should be said, the other aspects of the criminal justice system — the commission of crimes, the apprehension of those thought responsible and their trials and appeals. The aim is to impart to the public, information on public issues necessary for the making of the informed choices that democracy presupposes.

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<sup>6</sup> The judgment of the Committee on the performance of reporters and their employers of the press is comparable to but perhaps harsher than that of William J. vanden Heuvel, New York City lawyer and onetime chairman of the City's Board of Correction. While holding that position, he wrote in 1972:

"For the most part, the press has accepted arbitrary and ridiculous regulations that keep it from reporting the true nature of our institutional tragedies. It has been content to report events such as prison riots."

He added that, "Two years ago, the prisons were a media wasteland," but said, "An unprecedented turnabout is underway." vanden Heuvel, *The Press and the Prisons*, Columbia Journalism Review, May/June 1972, p. 35 at 35-36. The turnabout that vanden Heuvel saw is still underway, but it proceeds slowly.

A press that tried its utmost to duplicate with respect to prisons and prisoners its efforts in other areas would find itself hampered in doing so because of the restrictions placed by prison officials on access to their facilities, their records and their wards. The ban on prisoner interviews that is in issue here and in the cases with which this case is being heard is an important aspect of the pattern of such restrictions.

## **II. A FLAT PROHIBITION ON ALL INTERVIEWS WITH PRISONERS IS AN UNWARRANTED RESTRICTION ON NEWS GATHERING.**

No technique is more important to a reporter than that of the individual interview. Traditionally, the interview has probably been the principal technique by which news is developed and gathered.

Comparatively few news events are actually witnessed. Most of what we read in the daily paper or hear on the evening television news is based on what somebody told a reporter. Some stories, including some important ones, are inherently of that order; one can readily sense the cost of living going up, but one cannot "see" the precise rise of the index. As for events that can be experienced, there simply are not and cannot be enough reporters to be on hand for every spontaneous news break. Even many planned, prescheduled activities go unstaffed, in press parlance, because other demands on the reportorial staff are more pressing.

In many cases, someone is interested in seeing that an event is reported, and therefore press releases are distributed to the news media. For simple, straightforward events a handout of this sort often suffices. (The Government,

in effect, suggests reliance on handouts from prisoners when it argues that prisoner letters are one of the "alternative means of obtaining necessary information about prisoners and prison conditions" that make individual interviews unnecessary. [Pet. Br. 36]). However, where events of high public importance and especially events that are controversial are involved, the handout is clearly not good enough.

It is important in such cases that what the reporter is told be tested for its accuracy and reliability. The reporter frequently needs to question and cross-question the person who seeks to impart information to him or from whom he seeks to elicit information. Any investigator proceeds by means of interviews to probe the accuracy and reliability of what he is told. Interviews are particularly important when the source of information has a natural bias and is not well known to the investigator. This will ordinarily be true of the inmate sources of prison reporters.

Besides the fact that it makes impossible any testing for reliability, the prisoner-letter technique that the Government suggests as a substitute for interviews creates hopeless problems of timeliness.<sup>7</sup> Even were the suggested substitute broadened to permit interviews on the written request of the inmate, it would not do. Reporters are, or are meant to be, in the business of aggressively seeking out information, not waiting for it to come to them.

The other substitutes suggested by the Government (Pet. Br. 36-37) are no better, either singly or in combination. What might be learned about today's prison conditions

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<sup>7</sup> And in some jurisdictions there would be at least the fear, if not the reality, of official censorship of a letter.

from an interview with an inmate cannot be duplicated by talking with former inmates or with people who have themselves spoken with inmates or, much less, by talking with prison officials or hearing them testify before congressional committees.

Only literally is the key statement that the Government makes in the course of its discussion of alternative means of obtaining information true: "The policies and operations of the Bureau of Prisons and its institutions are not immune from press scrutiny or public view." (*Id.* at 37.) They may not be wholly immune from such scrutiny and view, but so long as reporters are barred from talking face-to-face on a confidential basis with individual inmates, the scrutiny is going to be less focused and the view dimmer.

We leave to the parties a detailed discussion of the justifications offered for the prohibition on interviews with individual inmates. Here, we would merely note that the record below shows, and the District Court found, that a substantial number of jurisdictions whose prison administration problems are comparable to those of the federal system generally allow prisoner interviews. The finding is borne out by the results of a questionnaire that the Committee addressed to prison administrators, described more fully immediately below. Of 37 administrators responding to the questionnaire, 26 said that, with limitations in some cases, they generally permit person-to-person, unmonitored interviews between reporters and inmates to which the inmate consents, and as a result of which, if the inmate agrees, his name can be used in any story that is published. Ten administrators said that they generally do not permit such interviews, and one said that he never does. All but two of the 34 administrators answering another question said that their interview policy is the same for all adult

offenders. Perhaps significantly, slightly more than half the administrators responding said that their interview policy had changed in the last five years. A prohibition of inmate interviews clearly has not been found to be essential to the orderly management of a prison system.

### III. THE PROHIBITION OF PRISON INTERVIEWS IS BUT ONE OF A NUMBER OF RESTRICTIONS THAT VARIOUS JURISDICTIONS PLACE UPON ACCESS TO PRISONS, PRISONERS AND PRISON RECORDS.

The narrow issue in this case and its companions is the constitutional validity of an outright prohibition on individual interviews with prisoners. The Committee believes it important, however, that the Court see this prohibition in the context of the overall pattern of arbitrary restrictions that hamper the press in the efforts it makes to report on prisons and prison life.

In 1972 the Committee sent to correctional administrators of the 50 states, the District of Columbia and selected large cities, and to certain military correctional institution administrators a questionnaire asking about their policies and practices concerning press access. Thirty-seven administrators responded. The last response was received in February 1973. The Committee's views in this section of the brief are based upon the returns from that questionnaire — for which no scientific sampling validity but only a generally accurate impression is claimed — and the experiences of individual reporters who have written about prisons and who discussed their experiences at two meetings convened by the Committee in the thought of possible amicus participation in this case.



One thing stands out from the replies to questionnaires and what the Committee has been told by reporters who have covered prison affairs: A substantial number of prison administrators believe that the press is not well informed and is interested mainly in sensationalism. Thus, it seems that many prison administrators do not fully trust the press. We suggest that an attitude of concern about the kind of stories that will appear has at least as much to do with prison access policies as legitimate concerns for security, privacy and rehabilitational and correctional policies.

What, then, are some reportorial needs, apart from face-to-face interviews, the fulfillment of which is hampered in some correctional systems?

1. Reporters should be able to walk about, to see the inside of prisons; including facilities for living, sleeping, and working; for medical care, recreation, rehabilitation and discipline; and

2. As a concomitant they should be able to talk with random prisoners or groups of prisoners about prison life.<sup>8</sup> Random conversations are not a substitute for confidential interviews, but they are useful in enabling the reporter to ascertain general inmate views, to develop stories and to

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<sup>8</sup> Almost all prison administrators responding to the Committee's questionnaire (34 of 37) indicated that they permitted the press to view prison facilities by means of guided tours or under some other method of supervision. Those answering the tour question affirmatively said also that during such tours reporters would be permitted to stop and talk with inmates or guards. Nevertheless, in some jurisdictions reporters have encountered what they consider undue restrictiveness as to the circumstances in which they can see the inside of prisons.

identify those with whom confidential interviews would be productive.<sup>9</sup>

"The press must have disciplined but total access to the prisons, not only to record the tours of dignitaries, but more important, to chronicle the emptiness and injustice of prison life, [and] to record the countless examples of failure in the bail and sentencing procedures. . . ." vanden Heuvel, *The Press and the Prisons*, Columbia Journalism Review, May/June 1972, p. 35 at 38.

3. They should be able to attend prison disciplinary hearings to observe the prison justice system in action.

4. They should have access to records of the kind that are commonly made available when they relate to other agencies of Government. This last need is particularly important because, when a reporter is working on what has come to be called an investigative story, *i.e.*, a story that relates not to some specific immediate event but to a course of conduct that someone would prefer not be disclosed, his

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<sup>9</sup> The *Boston Globe* is the newspaper referred to at p. 9, *supra*, that has a full-time prison reporter. In a story that appeared in the *Globe's* issue of November 2, 1973, the reporter, Stephen Wermiel, effectively used both random interviews and a planned interview with a known inmate source in reporting on conditions under a new superintendent in the maximum security prison at Walpole, Massachusetts. Unnamed inmates "selected at random in the prison halls" were quoted as expressing, in Wermiel's words, "a unified dissatisfaction with living conditions." The inmate president of the National Prisoners Reform Association, who was separately interviewed and was named and pictured, was quoted on the nature of his discussions with the new superintendent looking toward "meaningful reform."

usual first recourse will be to public records, which typically give him the necessary leads to those who may know something and be willing to tell him.

For example: If a reporter decided to investigate the quality of prison food or allegations of kickbacks to prison officials in charge of purchasing food, he would wish to see purchase orders, food contracts, payment vouchers, delivery receipts, etc. At that point, he might wish to interview specific prisoners about the food situation.

Or, if a reporter decided to investigate the quality of a vocational training project, he would wish to see the facility, budgets and purchase contracts, etc., and the records disclosing the educational background and training of the vocational teachers. At that point, he might decide it would be useful to interview particular named prisoners enrolled in the program.

Unless a news medium is willing to assign a reporter full time to develop the names of potential witnesses to poor quality food or poor quality vocational training, a denial of the records effectively prevents the reporter from knowing even the identity of the specific prisoner whom the reporter would wish to interview. Prison officials uniquely have the power thus to hide even the identity of persons who might be news sources.

In the case of detailed prison budgets, personnel records, disciplinary records and the like — which in some cases have been denied to reporters — there is not even a surface justification in prison security for any restrictions on access different from restrictions on the altogether comparable public records of other public agencies.

The burden of the substantive restrictions on access to prisons and prisoners is aggravated by a lack of defined procedures for seeking access. In many jurisdictions written

policies governing such access have not been established. Where written policies exist they are often not uniformly applied. Often when access requests are met with arbitrary denials, no reconsideration mechanism or administrative appeals are readily available. The reporter is often set upon a Catch-22 course when he tries to find out where to go for the information about prison life that he seeks.

We recognize that the Court in this case need not and probably will not wish to anticipate all that is involved in these other restrictions on access to prisons and prisoners. Any particular restriction can stand against the urgent claims of the First Amendment only on the strength of the particular justification that is offered for it, once access to prisons and prisoners is recognized as a part of news gathering that has "its First Amendment protections," *Branzburg v. Hayes*, 408 U.S. 665, 707 (1972). The illusory nature of the justification for the interview prohibition has been revealed on the record of this case. We believe that many other restrictions of which reporters complain would fare no better were they tested.

#### IV. IN PERFORMING ITS FUNCTION OF KEEPING THE PUBLIC INFORMED ABOUT PRISON AFFAIRS, THE PRESS MERITS THE PROTECTION OF THE FIRST AMENDMENT

When the press tries to report on life within correctional institutions, it is performing one of its very traditional functions, one that merits and has been held to have protection under the First Amendment.

The function is that of insuring that the public is informed about events of public importance that occur in places where, as a practical matter, not all members of

the public can be. The war correspondent, the reporter in a congressional press gallery or a press seat on the floor of a state legislature, the reporter who occupies a special desk in the courtroom of this Court all perform essentially that same function. Seldom do governmental authority and the press, asserting on behalf of the public the right effectively to gather news for the public's edification, squarely confront one another over this kind of access. Typically, the matter is worked out in the spirit of accommodation that animates our democratic, free and open society. There is little in the way of directly pertinent law. The dissection of the relevant First Amendment precedents is performed ably in the briefs of the parties. We would add only this:

The freedom of the press is specifically mentioned in the First Amendment along with freedom of speech. Something is thereby added to what the Amendment would say if only freedom of speech were mentioned. "The Constitution specifically selected the press, which includes not only newspapers, books, and magazines, but also humble leaflets and circulars, . . . to play an important role in the discussion of public affairs." *Mills v. Alabama*, 384 U.S. 214, 219 (1966).<sup>10</sup> The press, the Court went on

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<sup>10</sup> The emphasis in this brief is, for understandable reasons, on the newspaper, periodical and electronic press as it is commonly thought and spoken of. That is the emphasis of this Court's free press opinions also. No more than this Court in the quoted passage from *Mills v. Alabama*, however, does the Committee mean artificially to restrict the scope of the "press" whose freedom is guaranteed by the First Amendment. Whoever undertakes to find something out and report on it or merely to expound his views to some large or small number of his fellow citizens is, on the Committee's view, a part of the press so far as the First Amendment guarantees are concerned.

to say in that case, "serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve." The importance of the special constitutional capacity that the First Amendment confers on the press is demonstrated and underscored by one of this Court's landmark free press opinions, *Grosjean v. American Press Co.*, 297 U.S. 233 (1936).

However vocal he might be, however diligent in exercising his right of free speech, the ordinary citizen could not successfully complain on First Amendment grounds of a license tax measured by the gross receipts from his principal source of revenue. But the newspapers of Louisiana did maintain in the *Grosjean* case a successful challenge to just such a tax on their advertising revenues on the ground that it constituted an impermissible abridgment of the freedom of the press. In sustaining the newspapers' challenge, this Court said:

"The predominant purpose of the grant of immunity here invoked was to preserve an untrammelled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern.

The tax here . . . is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees. A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves." *Id.* at 250.

The significance of the specification of the press in the First Amendment must reside in part in the recognition that to protect the freedom of the press merely to speak, merely to publish what it has learned, is not enough. It must mean that there is full constitutional protection of what the Government in its brief in this case has described as the "crucial role" that the press plays in the fulfillment of the "right of the public to information about the affairs of state. . . ." The crucial role, on the Government's view, derives from the fact that "no individual has the time or the resources to gather all the information necessary to form intelligent opinions concerning the functioning of the Government." (Pet. Br. 48.)

The Government stops short of the point to which the logic of this position should take it when it in effect denies that Government has any obligation not to obstruct the channels through which news is gathered and asserts denigratingly, as if to answer with an aphorism all that its own earlier statements imply, that the First Amendment "is not defined by the convenience of the press."

It is, of course, not the convenience of the press that is served by the First Amendment. It is, as this Court has said, "the paramount public interest in a free flow of information to the people concerning public officials, their



servants." *Garrison v. Louisiana*, 379 U.S. 64, 77 (1964). The opinions giving that explanation or one like it of the exalted purpose of the First Amendment are numerous. They are well summed up in the Government's own statement that "the First Amendment is one of the vital bulwarks of our national commitment to intelligent self-government." (Pet. Br. 48.) They explain why, as the Government declines to recognize, this Court in *Branzburg v. Hayes*, 408 U.S. 665, 707 (1972), said that news gathering is not without its First Amendment protections. It is the scope of those protections, not their existence, that on any fair view of matters is the issue here. When those First Amendment protections are recognized, a far more compelling showing of governmental interest than has been made in this case for the prisoner interview ban, or could be made in other cases for other restrictions on reportorial access, would be needed to sustain such clogs on the free flow of information that the public needs and deserves about public institutions.

The public interest in freer access to prisons and prisoners is indeed compelling. "The responsibility of the news media is to lift the veil of secrecy surrounding the nation's prisons, to give voice to both the victims of crime and of the criminal justice system, and to reveal the incredible waste that our jails and penitentiaries represent." vanden Heuvel, *The Press and the Prisons*, *supra* at 35. We recognize, of course, that prisons are institutions with unique problems. Access may not be barred altogether, but obviously it must be regulated for the sake of security and for other legitimate detention and correctional reasons. An arrangement for pooled access — with a single reporter or a few reporters representing their colleagues

— has been suggested. *Id.* at 38.<sup>11</sup> Arrangements of some sort can be made and will be made if this Court determines that the First Amendment so requires.

In asking that a First Amendment rule be laid down that will require correctional administrators to consider and devise rational access arrangements for the press, we do not say that the First Amendment guarantees "the press a constitutional right of special access to information not available to the public generally." *Branzburg v. Hayes, supra*, at 684. Rather, the press' access is guaranteed by the Constitution precisely because the public deserves access to publicly supported institutions, including prisons. The press asks to perform in a prison setting its traditional role of proxy for the public. The administration of prisons is a matter that in our system must be open to public oversight. By no means is it the sort of delicate, confidential matter exemplified by grand jury proceedings and the conferences of this Court, which were mentioned in *Branzburg v. Hayes* as cases in which the press' right to gather news must yield to an interest in confidentiality enforceable against all the world.

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<sup>11</sup> A substantial majority of prison administrators responding to the Committee's questionnaire (21 of 37) said that they would favor some type of pooling arrangement during emergencies.

**CONCLUSION**

The Reporters Committee for Freedom of the Press Legal Defense and Research Fund respectfully submits that the First Amendment requires the result reached by the court below and therefore asks that its judgment be affirmed.

Respectfully submitted,

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April 1974



## APPENDIX

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April 3, 1974

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Re: Saxbe v. Washington Post Co.  
No. 73-1265

Dear Mr. Allen:

On behalf of the respondents in the above-captioned case, The Washington Post Company and Ben H. Bagdikian, I give consent to your filing of a brief amicus curiae on behalf of the Reporters Committee for Freedom of the Press Legal Defense and Research Fund.

Sincerely,

*Richard M. Cooper*  
Richard M. Cooper



Office of the Solicitor General  
Washington, D.C. 20530

April 3, 1974

William H. Allen, Esq.  
Covington & Burling  
888 Sixteenth Street, N.W.  
Washington, D.C. 20006

Re: Saxbe v. Washington Post Company  
No. 73-1265, October Term, 1973

Dear Mr. Allen:

In response to the request in your letter of April 2, I hereby consent to your filing a brief amicus curiae in the above-entitled case on behalf of the Reporters Committee for Freedom of the Press Legal Defense and Research Fund.

Sincerely,

*Robert H. Bork*

Robert H. Bork  
Solicitor General







NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

## Syllabus

### SAXBE, ATTORNEY GENERAL, ET AL. V. WASHINGTON POST CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-1265. Argued April 17, 1974—Decided June 24, 1974

The Policy Statement of the Federal Bureau of Prisons prohibiting personal interviews between newsmen and individually designated inmates of federal medium- and maximum-security prisons does not abridge the freedom of the press that the First Amendment guarantees, *Pell v. Procunier*, ante, p.—, since it “does not deny the press access to sources of information available to members of the general public,” but is merely a particularized application of the general rule that nobody may enter the prison and designate an inmate whom he would like to visit, unless the prospective visitor is a lawyer, clergyman, relative, or friend of that inmate. Pp. 3-7.

— U. S. App. D. C. —, — F. 2d —, reversed and remanded.

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J., and WHITE, BLACKMUN, and REHNQUIST, JJ., joined. DOUGLAS, J., filed a dissenting opinion, see No. 73-918. POWELL, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined.



NOTICE : This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

# SUPREME COURT OF THE UNITED STATES

No. 73-1265

William B. Saxbe, Attorney  
General of the United  
States, et al.,  
Petitioners,  
v.  
The Washington Post Co.  
et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the District  
of Columbia Circuit.

[June 24, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondents, a major metropolitan newspaper and one of its reporters, initiated this litigation to challenge the constitutionality of paragraph 4 (b) (6) of Policy Statement 1220.1A of the Federal Bureau of Prisons.<sup>1</sup> At the time that the case was in the District Court and the Court of Appeals, this regulation prohibited any personal interviews between newsmen and individually designated federal prison inmates. The Solicitor General has informed the Court that the regulation was recently amended "to permit press interviews at federal prison institutions that can be characterized as minimum security."<sup>2</sup> The general prohibition of press interviews with

<sup>1</sup> "Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not to be made public, if it is limited to the discussion of institutional facilities, programs and activities."

<sup>2</sup> Letter of April 16, 1974, to Clerk, Supreme Court of the United States, presently on file with the Clerk.

inmates remains in effect, however, in three-quarters of the federal prisons, i. e., in all medium- and maximum-security institutions, including the two institutions involved in this case.

In March of 1972, the respondents requested permission from the petitioners, the officials responsible for administering federal prisons, to conduct several interviews with specific inmates in the prisons at Lewisburg, Pennsylvania, and Danbury, Connecticut. The petitioners denied permission for such interviews on the authority of Policy Statement 1220.1A. The respondents thereupon commenced this suit to challenge these denials and the regulation on which they were predicated. Their essential contention was that the prohibition of all press interviews with prison inmates abridges the protection that the First Amendment accords the newsgathering activity of a free press. The District Court agreed with this contention and held that the Policy Statement, insofar as it totally prohibited all press interviews at the institutions involved, violated the First Amendment. Although the court acknowledged that institutional considerations could "justify the prohibition of some press-inmate interviews, the District Court ordered the petitioners to cease enforcing the blanket prohibition of all such interviews and, pending modification of the Policy Statement, to consider interview requests on an individual basis and "to withhold permission to interview . . . only where demonstrable administrative or disciplinary considerations predominate." 357 F. Supp. 770, 775.

The petitioners appealed the District Court's judgment to the Court of Appeals for the District of Columbia Circuit. We stayed the District Court's order pending the completion of that appeal. 406 U. S. 912 (1972). The first time this case was before it, the Court of Appeals remanded it to the District Court for additional findings

of fact and particularly for reconsideration in light of this Court's intervening decision in *Branzburg v. Hayes*, 408 U. S. 665 (1972). 477 F. 2d 1168 (1972). On remand, the District Court conducted further evidentiary hearings, supplemented its findings of fact, and reconsidered its conclusions of law in light of *Branzburg* and other recent decisions that were urged upon it. In due course, the court reaffirmed its original decision, 357 F. Supp. 779, and the petitioners again appealed to the Court of Appeals.

The Court of Appeals affirmed the judgment of the District Court. It held that press interviews with prison inmates could not be totally prohibited as the Policy Statement purported to do, but may "be denied only where it is the judgment of the administrator directly concerned, based on either the demonstrated behavior of the inmate, or special conditions existing at the institution at the time the interview is requested, or both, that the interview presents a serious risk of administrative or disciplinary problems." — F. 2d —, — (1974). Any blanket prohibition of such face-to-face interviews was held to abridge the First Amendment's protection of press freedom. Because of the important constitutional question involved, and because of an apparent conflict in approach to the question between the District of Columbia Circuit and the Ninth Circuit,<sup>3</sup> we granted certiorari. — U. S. —.

The policies of the Federal Bureau of Prisons regarding visitations to prison inmates do not differ significantly from the California policies considered in *Pell v. Procunier*, ante, at —. As the Court of Appeals noted,

<sup>3</sup> See *Seattle-Tacoma Newspaper Guild v. Parker*, 480 F. 2d 1062, 1066-1067 (1973). and *Hillery v. Procunier*, 364 F. Supp. 196, 199-200 (ND Cal. 1973).

"inmates' families, their attorneys, and religious counsel are accorded liberal visitation privileges. Even friends of inmates are allowed to visit, although their privileges appear to be somewhat more limited." — F. 2d, at —. Other than members of these limited groups with personal and professional ties to the inmates, members of the general public are not permitted under the Bureau's policy to enter the prisons and interview consenting inmates. This policy is applied with an even hand to all prospective visitors, including newsmen, who, like other members of the public, may enter the prisons to visit friends or family members. But, again like members of the general public, they may not enter the prison and insist on visiting an inmate with whom they have no such relationship. There is no indication on this record that Policy Statement 1220.1A has been interpreted or applied to prohibit a person, who is otherwise eligible to visit and interview an inmate, from doing so merely because he is a member of the press.<sup>4</sup>

Except for the limitation in Policy Statement 1220.1A on face-to-face press-inmate interviews, members of the press are accorded substantial access to the federal prisons in order to observe and report the conditions they find there. Indeed, journalists are given access to the prisons and to prison inmates that in significant respects exceeds that afforded to members of the general public. For example, Policy Statement 1220.1A permits press representatives to tour the prisons and to photograph any prison facilities.<sup>5</sup> During such tours a newsman is permitted to conduct brief interviews with any inmates he might en-

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<sup>4</sup> The Solicitor General's brief represents that "[m]embers of the press, like the public generally, may visit the prison to see friends there." Presumably, the same is true with respect to family members. The respondents have not disputed this representation.

<sup>5</sup> Paragraphs 4 (b) (5) and (7) of Policy Statement 1220.1A.

counter.<sup>6</sup> In addition, newsmen and inmates are permitted virtually unlimited written correspondence with each other.<sup>7</sup> Outgoing correspondence from inmates to press representatives is neither censored nor inspected. Incoming mail from press representatives is inspected only for contraband or statements inciting illegal action. Moreover, prison officials are available to the press and are required by Policy Statement 1220.1A to "give all possible assistance" to press representatives "in providing background and a specific report" concerning any inmate complaints.<sup>8</sup>

The respondents have also conceded in their brief that Policy Statement 1220.1A "has been interpreted by the Bureau to permit a newsman to interview a randomly selected group of inmates." As a result, the reporter-respondent in this case was permitted to interview a randomly selected group of inmates at the Lewisburg prison. Finally, in light of the constant turnover in the prison population, it is clear that there is always a large group of recently released prisoners who are available to both the press and the general public as a source of information about conditions in the federal prisons.<sup>9</sup>

Thus, it is clear that Policy Statement 1220.1A is not part of any attempt by the Federal Bureau of Prisons to conceal from the public the conditions prevailing in federal prisons. This limitation on prearranged press inter-

<sup>6</sup> See paragraph 4 (b) (6) set out in n. 1, *supra*. The newsman is requested not to reveal the identity of the inmate, and the conversation is to be limited to institutional facilities, programs, and activities.

<sup>7</sup> Paragraphs 4(b) (1) and (2) of Policy Statement 1220.1A.

<sup>8</sup> Paragraph 4 (b) (12) of Policy Statement 1220.1A.

<sup>9</sup> The Solicitor General's brief informs us that "approximately one-half of the prison population on any one day will be released with the following 12 months. The average population is 23,000, of whom approximately 12,000 are released each year."



views with individually designated inmates was motivated by the same disciplinary and administrative considerations that underlie § 115.071 of the California Department of Corrections Manual, which we considered in *Procunier v. Hillery* and *Pell v. Procunier*, ante. The experience of the Bureau accords with that of the California Department of Corrections and suggests that the interest of the press is often "concentrated on a relatively small number of inmates who, as a result, [become] virtual 'public figures' within the prison society and gai[n] a disproportionate degree of notoriety and influence among their fellow inmates." *Pell*, ante, at —. As a result those inmates who are conspicuously publicized because of their repeated contacts with the press tend to become the source of substantial disciplinary problems that can engulf a large portion of the population at a prison.

The District Court and the Court of Appeals sought to meet this problem by decreeing a selective policy whereby prison officials could deny interviews likely to lead to disciplinary problems. In the expert judgment of the petitioners, however, such a selective policy would spawn serious discipline and morale problems of its own by engendering hostility and resentment among inmates who were refused interview privileges granted to their fellows. The Director of the Bureau testified that "one of the very basic tenets of sound correctional administration" is "to treat all inmates incarcerated in [the] institutions, as far as possible, equally." This expert and professional judgment is, of course, entitled to great deference.

In this case, however, it is unnecessary to engage in any delicate balancing of such penal considerations against the legitimate demands of the First Amendment. For it is apparent that the sole limitation imposed on newsgathering by Policy Statement 1220.1A is no more than a particularized application of the general rule that nobody

may enter the prison and designate an inmate whom he would like to visit, unless the prospective visitor is a lawyer, clergyman, relative, or friend of that inmate. This limitation on visitations is justified by what the Court of Appeals acknowledged as "the truism that prisons are institutions where public access is generally limited." — F. 2d, at —. See *Adderley v. Florida*, 385 U. S. 39, 41 (1968). In this regard, the Bureau of Prisons visitation policy does not place the press in any less advantageous position than the public generally. Indeed, the total access to federal prisons and prison inmates that the Bureau of Prisons accords to the press far surpasses that available to other members of the public.

We find this case constitutionally indistinguishable from *Pell v. Procunier*, ante, and thus fully controlled by the holding in that case. "[N]ewsmen have no constitutional right of access to prisons or their inmates beyond that afforded the general public." *Pell*, ante, at —. The proposition "that the Constitution imposes upon government the affirmative duty to make available to journalists sources of information not available to members of the public generally . . . finds no support in the words of the Constitution or in any decision of this Court." *Id.*, at —. Thus, since Policy Statement 1220.1A "does not deny the press access to sources of information available to members of the general public," *ibid.*, we hold that it does not abridge the freedom that the First Amendment guarantees. Accordingly, the judgment of the Court of Appeals is reversed and the case is remanded to the District Court for further proceedings consistent with this opinion.

*It is so ordered.*

# SUPREME COURT OF THE UNITED STATES

No. 73-1265

William B. Saxbe, Attorney  
General of the United  
States, et al.,  
Petitioners,  
v.  
The Washington Post Co.  
et al.

On Writ of Certiorari to the  
United States Court of  
Appeals for the District  
of Columbia Circuit.

[June 24, 1974]

MR. JUSTICE POWELL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

The Court today upholds the authority of the Bureau of Prisons to promulgate and enforce an absolute ban against personal interviews of prison inmates by representatives of the news media.<sup>1</sup> In my view the interview ban impermissibly burdens First Amendment freedoms. My analysis proceeds as follows. Part I addresses the nature and effect of the Bureau's policy. Part II concerns the constitutional underpinnings of respondents' attack on that policy. Part III considers the Bureau's justifications for an absolute interview ban in light of the appropriate standard of First Amendment review, and Part IV surveys some of the factors that the Bureau may consider in formulating a constitutionally acceptable interview policy. Part V contains some concluding remarks.

<sup>1</sup> Throughout this opinion I use the terms "news media" and "press" to refer generally to both print and broadcast journalism. Of course, the use of television equipment in prisons presents special problems that are not before the Court in this case.

## I

The ban against press interviews is not part of any general news blackout in the federal prisons. Bureau of Prisons Policy Statement 1220.1A establishes the official policy regarding prisoner-press communications, and that policy in many respects commendably facilitates public dissemination of information about federal penal institutions. Inmate letters addressed to members of the news media are neither opened nor censored, and incoming mail from press representatives is inspected only for contraband and for content likely to incite illegal conduct. Furthermore, the Bureau officially encourages newsmen to visit federal prisons in order to report on correctional facilities and programs.

The specific issue in this case is the constitutionality of the Bureau's ban against prisoner-press interviews. That policy is set forth in § 4b (6) of the Policy Statement:

"Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, a conversation may be permitted with inmates whose identity is not to be made public, if it is limited to institutional facilities, programs, and activities."

The Policy Statement does not explicate the distinction between an "interview" and a "conversation," but that subject was explored in evidentiary proceedings before the District Court. The court found that a "conversation" generally occurs when a newsman is taking a supervised tour of an institution and stops to ask an inmate about prison conditions and the like. It is a brief, spontaneous discussion with a randomly encountered inmate on subjects limited to "institutional facilities, programs, and activities." An "interview," by contrast, is a pre-arranged private meeting with a specifically designated in-

mate. It is unrestricted as to subject matter and lasts a sufficient time to permit full discussion.<sup>2</sup>

The Bureau's prohibition against press interviews is absolute in nature. It applies without regard to the record and characteristics of the particular inmate involved, the purpose of the interview, or the conditions then prevailing at the institution in question. At the time of the decisions of the District Court and the Court of Appeals, the interview ban applied with equal rigor to every correctional facility administered by the Bureau, community treatment centers as well as major penitentiaries. By letter dated April 16, 1974, the Solicitor General informed us that the Bureau subsequently modified its policy to exempt minimum security facilities from the absolute prohibition of press interviews. This change affects approximately one-quarter of the inmate population of the federal prisons. For the remainder, the Bureau intends to continue its established policy.

In its order remanding the case for reconsideration in light of *Branzburg v. Hayes*, 408 U. S. 665 (1972), the Court of Appeals directed the District Court to determine the "extent to which the accurate and effective reporting of news has a critical dependence upon the opportunity for private personal interviews." — U. S. App. D. C. —, 447 F. 2d 1168, 1169 (1972). The District Court held an evidentiary hearing on this subject and made specific findings of fact. 357 F. Supp. 779 (DDC 1972). Thanks to this special effort by the Court of Appeals and the Dis-

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<sup>2</sup> In at least two instances, federal wardens have permitted newsmen to interview randomly selected groups of inmates. Apparently, such occurrences are not widespread, and the basis for them is unclear. Neither in express terms nor by implication does the Policy Statement authorize such group interviews, and the Government does not suggest that the Bureau of Prisons officially approves the practice.

trict Court, we have an unusually detailed and informative account of the effect of the interview ban on prisoner-press communications.<sup>3</sup>

The District Court received testimony on this point from six knowledgeable persons.<sup>4</sup> All agreed that personal interviews are crucial to effective reporting in the prison context. A newsman depends on interviews in much the same way that a trial attorney relies on cross-examination. Only in face-to-face discussion can a reporter put a question to an inmate and respond to his answer with an immediate follow-up question. Only in an interview can the reporter pursue a particular line of inquiry to a satisfactory resolution or confront an inmate with discrepancies or apparent inconsistencies in his story. Without a personal interview a reporter is often at a loss to

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<sup>3</sup> Writing for the Court of Appeals, Judge McGowan attributed this special care to develop an unusually enlightening evidentiary record to the "great respect which the federal judiciary entertains for the Bureau by reason of its long and continuous history of distinguished and enlightened leadership. . . ." — F. 2d, at —. This is a sentiment which I fully share, for the Bureau has long been a constructive leader in prison reform.

<sup>4</sup> The court received testimony from three experienced reporters, two academic journalists, and an attorney with special expertise in this area. The reporters were respondent Ben H. Bagdikian, a *Washington Post* reporter experienced in covering prisons and interviewing inmates; Timothy Leland, a Pulitzer Prize winner who is Assistant Managing Editor of the *Boston Globe* and head of its investigative reporting team; and John W. Machacek, a reporter for the *Rochester-Times-Union*, who won a Pulitzer Prize for his coverage of the Attica Prison riot. The academic journalists were Elie Abel, Dean of the Graduate School of Journalism of Columbia University; and Roy M. Fisher, Dean of the School of Journalism of the University of Missouri and former editor of the *Chicago Daily News*. The sixth witness was Arthur L. Linnan, an attorney who served as general counsel to the New York State Commission on Attica. In that capacity he supervised an investigation involving 1,600 inmate interviews, at least 75 of which he conducted personally.

determine the honesty of his informant or the accuracy of the information received.<sup>5</sup> This is particularly true in the prison environment, where the sources of information are unlikely to be well known to newsmen or to have established any independent basis for assessing credibility. Consequently, ethical newsmen are reluctant to publish a story without an opportunity through face-to-face discussion to evaluate the veracity and reliability of its source. Those who do publish without interviews are likely to print inaccurate, incomplete, and sometimes jaundiced news items. The detailed testimony on this point led the District Court to find as a fact that the absolute interview ban precludes accurate and effective reporting on prison conditions and inmate grievances.

The District Court also found that the alternative avenues of prisoner-press communication allowed by the Policy Statement, whether considered singly or in aggregation, are insufficient to compensate for the prohibition of personal interviews. For the reasons stated above, correspondence is decidedly inferior to face-to-face discussion as a means of obtaining reliable information about prison conditions and inmate grievances. In addition, the prevalence of functional illiteracy among the inmate population poses a serious difficulty; many prisoners are simply incapable of communicating effectively in writing.

Random conversations during supervised tours of prison facilities are also no substitute for personal interviews with designated inmates. The conversations allowed by the Policy Statement are restricted in both duration and permissible subject matter. Furthermore, not every in-

<sup>5</sup> Both Dean Abel and Dean Fisher testified that the personal interview is so indispensable to effective reporting that the development of interviewing techniques occupies a central place in the curricula of professional journalism schools.



mate is equally qualified to speak on every subject. If a reporter is investigating a particular incident, the opportunity to converse with inmates who were not present is of little consequence. Moreover, the conversations associated with guided tours are often held in the presence of several inmates, a factor likely to result in distortion of the information obtained.<sup>6</sup> The District Court received detailed testimony concerning the kinds of information that can only be obtained through personal interviews of individual inmates.

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<sup>6</sup> In recounting his experience as general counsel to the New York State Special Commission on Attica, Arthur L. Liman gave the following testimony:

"We found that in the group interviews the inmates tended to give us rhetoric, rather than facts, and that . . . in the interest of showing solidarity, inmates were making speeches to us rather than confiding what I knew in many cases to be the fact.

"I should add that the basic problem in conducting interviews at a prison is that it is a society in which inmates face sanctions and rewards not just from the administration but from other inmates; and that when an inmate sees you in private, he will tell you things about the administration that may not be unfavorable but may in many cases be favorable. I found that when we saw them in a group, there was a tendency to say nothing favorable about the administration and instead simply to make a speech about how horrible conditions were. In fact, many of the inmates who would say this in a group would say something different when they were seen alone." App. 290-291.

"There is something which is not stressed in our description of conditions because we found it not to be a major factor at Attica, and that is the question or the issue of physical brutality toward inmates. The press, before this investigation, had played that up as the major grievance at Attica. We found, when we talked to inmates privately, that the incidence of physical confrontation between officers and inmates was rather limited, and that the real grievance was not about those incidents, but rather about what they would feel was a form of psychic repression, depriving people of their manhood. Therefore I think a lot of the myth about physical beatings was dispelled." App. 291-292.

On the basis of this and other evidence, the District Court found that personal interviews are essential to accurate and effective reporting in the prison environment. The Court of Appeals endorsed that conclusion, noting that the trial court's findings of fact on this issue "are supported by a substantial body of evidence of record, and indeed appear to be uncontradicted." — F. 2d, at —. The Government does not seriously attack this conclusion. Instead, it contends that the effect of the Bureau's interview ban on prisoner-press communications raises no claim of constitutional dimensions. It is to that question that I now turn.

## II

Respondents assert a constitutional right to gather news. In the language of the Court of Appeals, they claim a right of access by the press to newsworthy events. However characterized, the gist of the argument is that the constitutional guarantee of a free press may be rendered ineffective by excessive restraints on access to information, and therefore that the Government may not enforce such restrictions absent some substantial justification for doing so. In other words, respondents contend that the First Amendment protects both the dissemination of news and the antecedent activity of obtaining the information that becomes news.

The Court rejects this claim on the ground that "newsmen have no constitutional right of access to prisons or their inmates beyond that afforded the general public." *Pell v. Procunier*, ante, at —. It is said that First Amendment protections for news gathering by the press reach only so far as the opportunities available for the ordinary citizen to have access to the source of news. Because the Bureau of Prisons does not specifically discriminate against the news media, its absolute prohibition of prisoner-press interviews is not susceptible to constitu-

tional attack. In the Court's view, this is true despite the factual showing that the interview ban precludes effective reporting on prison conditions and inmate grievances. From all that appears in the Court's opinion, one would think that any governmental restriction on access to information, no matter how severe, would be constitutionally acceptable to the majority so long as it does not single out the media for special disabilities not applicable to the public at large.

I agree, of course, that neither any media organization nor reporters as individuals have constitutional rights superior to those enjoyed by ordinary citizens. The guarantees of the First Amendment broadly secure the rights of every citizen; they do not create special privileges for particular groups or individuals. For me, at least, it is clear that persons who become journalists acquire thereby no special immunity from governmental regulation. To this extent I agree with the majority. But I cannot follow the Court in concluding that any governmental restriction on press access to information, so long as it is nondiscriminatory, falls outside the purview of First Amendment concern.

The Court principally relies on two precedents. In *Zemel v. Rusk*, 381 U. S. 1 (1965), the Court rejected a United States citizen's contention that he had a First Amendment right to visit Cuba in order to inform himself of the conditions there. The more recent authority is *Branzburg v. Hayes*, 408 U. S. 665 (1972), where we considered the assertion by newsmen of a qualified First Amendment right to refuse to reveal their confidential sources or the information obtained from them to grand juries. The Court rejected this claim, primarily on the ground that the largely speculative public interest "in possible future news about crime from undisclosed, unverified sources" could not override the competing inter-

est "in pursuing and prosecuting those crimes reported to the press by informants and in deterring the commission of such crimes in the future." *Id.*, at 695.

Relying on these precedents, the majority apparently concludes that nondiscriminatory restrictions on press access to information are constitutionally irrelevant. Neither *Zemel* nor *Branzburg* warrants so broad a reading. In *Zemel* the Court rejected the asserted First Amendment right to visit Cuba on the ground that the governmental restriction on trips to that country was "an inhibition of action" rather than a restraint of speech." 381 U. S., at 17. However appropriate to the context of that case, this distinction could not have been intended as an all-embracing test for determining which governmental regulations implicate First Amendment freedoms and which do not. The decision in *United States v. O'Brien*, 391 U. S. 367 (1968), is sufficient answer to any such suggestion. Moreover, the dichotomy between speech and action, while often helpful to analysis, is too uncertain to serve as the dispositive factor in charting the outer boundaries of First Amendment concerns. In the instant case, for example, it may be said with equal facility that the Bureau forbids the *conduct*, at least by newsmen and the public generally, of holding a private meeting with an incarcerated individual or, alternatively, that the Bureau prohibits the direct exchange of *speech* that constitutes an interview with a press representative. In light of the Bureau's willingness to allow lawyers, clergymen, relatives, and friends to meet privately with designated inmates, the latter characterization of the interview ban seems closer to the mark, but in my view the scope and meaning of First Amendment guarantees do not hinge on these semantic distinctions. The reality of the situation is the same, certainly in this case, and there is no magic in choosing one characterization rather

than the other. Simply stated, the distinction that formed the basis for decision in *Zemel* is not helpful here.

Nor does *Branzburg v. Hayes, supra*, compel the majority's resolution of this case. It is true, of course, that the *Branzburg* decision rejected an argument grounded in the assertion of a First Amendment right to gather news and that the opinion contains language which, when read in isolation, may be read to support the majority's view. *E. g.*, 408 U. S., at 684-685. Taken in its entirety, however, *Branzburg* does not endorse so sweeping a rejection of First Amendment challenges to restraints on access to news. The Court did not hold that the Government is wholly free to restrict press access to newsworthy information. To the contrary, we recognized explicitly that the constitutional guarantee of freedom of the press does extend to some of the antecedent activities that make the right to publish meaningful: "Nor is it suggested that news gathering does not qualify for First Amendment protection; without some protection for seeking out news, freedom of the press could be eviscerated." *Id.*, at 681. We later reiterated this point by noting that "news gathering is not without its First Amendment protections . . . ." *Id.*, at 707. And I emphasized the limited nature of the *Branzburg* holding in my concurring opinion: "The Court does not hold that newsmen, subpoenaed to testify before a grand jury, are without constitutional rights with respect to the gathering of news or the safeguarding of their sources." *Id.*, at 709 (opinion of POWELL, J.). In addition to these explicit statements, a fair reading of the majority's analysis in *Branzburg* makes plain that the result hinged on an assessment of the competing societal interests involved in that case rather than on any determination that First Amendment freedoms were not implicated. See especially *id.*, at 700-701.

In sum, neither *Zemel* nor *Branzburg* presents a barrier to independent consideration of respondents' constitutional attack on the interview ban. Those precedents arose in contexts far removed from that of the instant case, and in my view neither controls here. To the extent that *Zemel* and *Branzburg* speak to the issue before us, they reflect no more than a sensible disinclination to follow the right-to-access argument as far as dry logic might extend. As the Court observed in *Zemel*, "[t]here are few restrictions on action which could not be clothed by ingenious argument in the garb of decreased data flow." 381 U. S., at 16-17. It goes too far to suggest that the Government must justify under the stringent standards of First Amendment review every regulation that might affect in some tangential way the availability of information to the news media. But to my mind it is equally impermissible to conclude that no governmental inhibition of press access to newsworthy information warrants constitutional scrutiny. At some point official restraints on access to news sources, even though not directed solely at the press, may so undermine the function of the First Amendment that it is both appropriate and necessary to require the Government to justify such regulations in terms more compelling than discretionary authority and administrative convenience. It is worth repeating our admonition in *Branzburg* that "without some protection for seeking out the news, freedom of the press could be eviscerated." 408 U. S., at 681.

The specific issue here is whether the Bureau's prohibition of prisoner-press interviews gives rise to a claim of constitutional dimensions. The interview ban is categorical in nature. Its consequence is to preclude accurate and effective reporting on prison conditions and inmate grievances. These subjects are not privileged or confidential. The Government has no legitimate interest in

preventing newsmen from obtaining the information that they may learn through personal interviews or from reporting their findings to the public. Quite to the contrary, federal prisons are public institutions. The administration of these institutions, the effectiveness of their rehabilitative programs, the conditions of confinement that they maintain, and the experiences of the individuals incarcerated therein are all matters of legitimate societal interest and concern.<sup>7</sup> Respondents do not assert a right to force disclosure of confidential information or to invade in any way the decisionmaking processes of governmental officials. Neither do they seek to question any inmate who does not wish to be interviewed. They only seek to be free of an exceptionless prohibition against a method of news gathering that is essential to effective reporting in the prison context.

I believe that this sweeping prohibition of prisoner-press interviews substantially impairs a core value of the First Amendment. Some years ago, Professor Chafee

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<sup>7</sup> The history of our prisons is in large measure a chronicle of public indifference and neglect. THE CHIEF JUSTICE, who has provided enlightening leadership on the subject, has spoken out frequently against the ignorance and apathy that characterizes our Nation's approach to the problems of our prisons:

"Yet with all this development of the step-by-step details in the criminal adversary process, we continue, at the termination of that process, to brush under the rug the problems of those who are found guilty and subject to criminal sentence. In a very immature way, we seem to want to remove the problem from public consciousness. It is a melancholy truth that it has taken the tragic prison outbreaks of the past three years to focus widespread public attention on this problem." W. BURGER, "Our Options Are Limited," pp. 4-5 (Remarks before the 1972 Annual Dinner of the National Conference of Christians and Jews, Phila., Pa., Nov. 16, 1972). See W. BURGER, "For Whom the Bell Tolls," pp. 6, 9-11 (Remarks before the Association of the Bar of the City of New York, N. Y., N. Y., Feb. 17, 1970).



pointed out that the guarantee of freedom of speech and press protects two kinds of interests: "There is an individual interest, the need of many men to express their opinions on matters vital to them if life is to be worth living, and a social interest in the attainment of truth, so that the country may not only adopt the wisest course of action but carry it out in the wisest way." Z. Chafee, *Free Speech in the United States* 33 (1954). In its usual application—as a bar to governmental restraints on speech or publication—the First Amendment protects important values of individual expression and personal self-fulfillment. But where as here, the Government imposes neither a penalty on speech nor any sanction against publication, these individualistic values of the First Amendment are not directly implicated.

What is at stake here is the societal function of the First Amendment in preserving free public discussion of governmental affairs. No aspect of that constitutional guarantee is more rightly treasured than its protection of the ability of our people through free and open debate to consider and resolve their own destiny. As the Solicitor General made the point, "[t]he First Amendment is one of the vital bulwarks of our national commitment to intelligent self-government." Brief for petitioner 47-48. It embodies our Nation's commitment to popular self-determination and our abiding faith that the surest course for developing sound national policy lies in a free exchange of views on public issues.<sup>\*</sup> And public debate must not

<sup>\*</sup> Indeed, Professor Meiklejohn identified this aspect of the First Amendment as its paramount value:

"Just so far as, at any point, the citizens who are to decide an issue are denied acquaintance with information or opinion or doubt or disbelief or criticism which is relevant to that issue, just so far the result must be ill-considered, ill-balanced planning for the general good. *It is that mutilation of the thinking process of the community against which the First Amendment to the Constitution is di-*

only be unfettered; it must also be informed. For that reason this Court has repeatedly stated that First Amendment concerns encompass the receipt of information and ideas as well as the right of free expression. *Kleindienst v. Mandel*, 408 U. S. 753, 762 (1972); *Red Lion Broadcasting Co. v. FCC*, 395 U. S. 367, 390 (1969); *Lamont v. Postmaster General*, 381 U. S. 301 (1962); *Martin v. City of Struthers*, 319 U. S. 141, 143 (1943).

In my view this reasoning also underlies our recognition in *Branzburg* that "news gathering is not without its First Amendment protections . . . ." 408 U. S., at 707. "An informed public depends on accurate and effective reporting by the news media. No individual can obtain for himself the information needed for the intelligent discharge of his political responsibilities. For most citizens the prospect of personal familiarity with newsworthy events is hopelessly unrealistic. In seeking out the news the press therefore acts as an agent of the public at large. It is the means by which the people receive that free flow of information and ideas essential to intelligent self-government. By enabling the public to assert meaningful control over the political process, the press performs a crucial function in effecting the societal purpose of the First Amendment. That function is recognized by specific reference to the press in the text of the Amendment and by the precedents of this Court:

"The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs. Thus the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the

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rected. The principle of freedom of speech springs from the necessities of the program of self-government."

A. Meiklejohn, *Free Speech*, 27 (1948) (emphasis in original).

people responsible to all the people whom they were selected to serve." *Mills v. Alabama*, 384 U. S. 214, 219 (1966).

This constitutionally established role of the news media is directly implicated here. For good reasons, unrestrained public access is not permitted. The people must therefore depend on the press for information concerning public institutions. The Bureau's absolute prohibition of prisoner-press interviews negates the ability of the press to discharge that function and thereby substantially impairs the right of the people to a free flow of information and ideas on the conduct of their Government. The underlying right is the right of the public generally. The press is the necessary representative of the public's interest in this context and the instrumentality which effects the public's right. I therefore conclude that the Bureau's ban against personal interviews must be put to the test of First Amendment review.

### III

Because I believe that the ban against prisoner-press interviews significantly impinges on First Amendment freedoms, I must consider whether the Government has met its heavy burden of justification for that policy. In *Tinker v. Des Moines School District*, 393 U. S. 503 (1969), the Court noted that First Amendment guarantees must be "applied in light of the special characteristics of the . . . environment." *Id.*, at 506. Earlier this Term we had occasion to consider the applicability of those guarantees in light of the special characteristics of the prison environment. That opportunity arose in *Procunier v. Martinez*, — U. S. — (1974), where we considered the constitutionality of California prison regulations authorizing censorship of inmate correspondence. We declined to analyze that case in terms of "prisoners'

rights," for we concluded that censorship of prisoner mail, whether incoming or outgoing, impinges on the interest in communication of both the inmate and the nonprisoner correspondent: "Whatever the status of a prisoner's claim to uncensored correspondence with an outsider, it is plain that the latter's interest is grounded in the First Amendment's guarantee of freedom of speech." *Id.*, at — (slip op., p. 12). We therefore looked for guidance "not to cases involving questions of 'prisoners' rights' but to decisions of this Court dealing with the general problem of incidental restrictions on First Amendment liberties imposed in furtherance of legitimate governmental activities." *Id.*, at 13. Adopting the approach followed in *Tinker, Healy v. James*, 408 U. S. 169 (1972), and *United States v. O'Brien*, 391 U. S. 367 (1968), we enunciated the following standard for determining the constitutionality of prison regulations that limit the First Amendment liberties of nonprisoners:

"First, the regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression . . . . Second, the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the legitimate governmental interest involved." *Id.*, at — (slip op., p. 17).

We announced *Procunier v. Martinez*, *supra*, after final decision of this case by the District Court and affirmance by the Court of Appeals. Happily, those courts anticipated our holding in *Procunier* and decided this case under a standard of First Amendment review that is in substance identical to our formulation there. Thus, the Court of Appeals sought to assure that the impairment of the public's right to a free flow of information about prisons is "no greater than is necessary for the protection of the legitimate societal interests in the effective admin-

istration of [penal] systems." — F. 2d, at —.<sup>9</sup> The court reviewed in detail the various interests asserted by the Bureau and reached the following conclusion:

"[W]hile we do not question that the concerns voiced by the Bureau are legitimate interests that merit protection, we must agree with the District Court that they do not, individually or in total, justify the sweeping absolute ban that the Bureau has chosen to impose. When regulating an area in which First Amendment interests are involved, administrative officials must be careful not only to assure that they are responding to the legitimate interests which are within their powers to protect; they must also take care not to cast regulations in a broad manner that unnecessarily sacrifices First Amendment rights. In this case the scope of the interview ban is excessive; the Bureau's interests can and must be protected on a more selective basis." *Id.*, at —.

I agree with this conclusion by the Court of Appeals. The Bureau's principal justification for its interview has become known during the course of this litigation as the "big wheel" phenomenon. The phrase refers generally to inmate leaders. The Bureau argues that press interviews with "big wheels" increase their status and influence and thus enhance their ability to persuade other prisoners to engage in disruptive behavior. As a result security is threatened, discipline impaired, and meaningful rehabilitation rendered more problematical than ever.

There seems to be little question that "big wheels" do exist<sup>10</sup> and that their capacity to influence their fellow

<sup>9</sup> The District Court framed this standard in question form: "In short, are the limitations placed on First Amendment freedoms no greater than is necessary to protect the governmental interests asserted?" — F. Supp., at —.

<sup>10</sup> The following excerpt from the examination of Hans W. Mattick, Professor of Criminal Justice and Director of the Center for

inmates may have a negative impact on the correctional environment of penal institutions. Whether press interviews play a significant role in the creation of "big

Research in Criminal Justice at the University of Illinois, explains the bases for inmate leadership:

"Q. What are the particular talents or factors that would lead inmates to look upon particular persons among them as leaders?

"A. Well, it would depend in part on the native talents of the person, whether he was reasonably articulate, whether he has reasonable social skills. But that wouldn't be sufficient.

"He would also have to have some significant position in the prison, whether that would be the clerk of a cellhouse or whether that would be the assistant to a shop foreman or whether he would be a person who was a porter or a runner, which looks like a low status position to outsiders, but which position has great mobility and therefore you can become a message sender and a message carrier, or persons who work in areas that give them access to goods in what is essentially a scarcity economy.

"So people who work in the kitchens or bakery or where scarce supplies are and therefore can distribute them illegitimately or serve other purposes of that kind, they tend to have leadership.

"Q. Does the fact that an inmate is well known outside of prison tend to make him a leader within a prison among the inmates within the prison?

"A. It depends a great deal on the circumstances; that is, for instance, notoriety by itself can't bestow leadership.

"For instance, Sirhan Sirhan, for example, or Richard Speck are simply notorious and that doesn't bestow leadership qualities on them. Or someone like Al Capone, for example, may have had great status outside of the prison, but when he was in prison, he became the object of revenge and attacks by persons who wanted to settle old scores, because it was felt that he couldn't implement enough power to retaliate in turn.

"On the other hand, there were persons, confidence men or spectacular burglars or armed robbers with big scores or something of that kind, where their reputation precedes them and follows them into prison, and that then is combined, and also with certain talents and social skill and articulateness, and if it also looks as though they have a future in the free community, either in the illegitimate world or the legitimate world, that can play a part in the phenomenon that we call leadership." Supp. App., Vol. II, at 580-581.

wheels" or in the enhancement of their prestige was a subject of dispute in the District Court. With appropriate regard for the expertise of prison administrators, that court found that the problems associated with the "big wheel" phenomenon "are all real considerations and while somewhat impressionistic, they are supported by evidence and advanced in good faith." — F. Supp., at —.

The District Court also found, however, that the "big wheel" theory does not justify the Bureau's categorical prohibition of all press interviews, and the Court of Appeals endorsed this conclusion. The rationale applies only to those individuals with both disruptive proclivities and leadership potential. The record reveals estimates of the number of prison troublemakers ranging from five to ten percent. Logically, the number of prisoners in this category who have significant influence in the inmate community should comprise a substantially smaller percentage. To the extent that the "big wheel" phenomenon includes influential inmates who generally cooperate in maintaining institutional order, it is not a problem at all. Publicity which enhances *their* prestige is certainly no hinderance to effective penal administration. Moreover, the Bureau has not shown that it is unable to identify disruptive "big wheels" and to take precautions specifically designed to prevent the adverse effects of media attention to such inmates. In short, the remedy of no interview of any inmate is broader than is necessary to avoid the concededly real problems of the "big wheel" phenomenon.<sup>11</sup>

This conclusion is supported by detailed evidence and by the successful experience of other prison systems in al-

<sup>11</sup> The other considerations advanced by the Bureau do not justify an absolute interview ban but only indicate the difficulties of case-by-case evaluation of interview requests. These arguments are addressed in Part IV.



lowing prisoner-press interviews. In connection with this litigation, counsel for respondents attempted to ascertain the interview policies followed by prison administrators in every State and in numerous local jurisdictions. The District Court received into evidence only those policy statements that had been adopted in written form. Of the 24 American jurisdictions in this sample, only five broadly prohibit personal interviews of prison inmates by media representatives.<sup>12</sup> Seven jurisdictions vest in correctional officials the authority to allow or deny such interviews on a case-by-case basis,<sup>13</sup> and 11 generally permit prisoner-press interviews.<sup>14</sup> Thus, correctional authorities in a substantial majority of the prison systems represented have found no need to adopt an exceptionless prohibition against all press interviews of consenting inmates, and a significant number of jurisdictions more or less freely permit them. The District Court received detailed evidence concerning these prison systems and the success of the open interview policy<sup>15</sup> and found no substantial reason to suppose that the Bureau of Prisons faces difficulties more severe than those encountered in the jurisdictions that generally allow press interviews. This survey of prevailing practices reinforces the conclusion that the Bureau's prohibition of all prisoner-press inter-

<sup>12</sup> These five jurisdictions are California, Connecticut, Kentucky, Virginia, and Wisconsin.

<sup>13</sup> This approach is followed in Alaska, Georgia, Montana, New Jersey, Oregon, Pennsylvania, and South Carolina.

<sup>14</sup> The jurisdictions that generally permit personal interviews are Illinois, Maine, Maryland, Massachusetts, Nebraska, North Carolina, Ohio, Vermont, Iowa, New York City, and the District of Columbia. Additionally, one jurisdiction, New Mexico, follows a unique policy that defies categorization.

<sup>15</sup> The Court received such evidence from penal administrators in Illinois, Massachusetts, New York City, and the District of Columbia.

views is not necessary to the protection of the legitimate governmental interests at stake.

#### IV

Finding no necessity for an absolute interview ban, the District Court proceeded to require that interview requests be evaluated on a case-by-case basis and that they be refused only when the conduct of an individual inmate or the conditions prevailing at a particular institution warrant such action. The Court of Appeals affirmed the substance of the order:<sup>16</sup>

"[W]e . . . require that interviews be denied only where it is the judgment of the administrator directly concerned, based on either the demonstrated behavior of the inmate, or special conditions existing at the institution at the time the interview is requested, or both, that the interview presents a serious risk of

<sup>16</sup>The District Court ordered that the Bureau draft regulations generally permitting press interviews and that exceptions to that policy "be precisely drawn to prohibit an interview only where it can be established as a matter of probability on the basis of actual experience that serious administrative or disciplinary problems are, in the judgment of the prison administrators directly concerned, likely to be created by the interview because of either the demonstrated behavior of the inmate concerned or special conditions existing at the inmate's institution at the particular time the interview is requested." — F. Supp., at — The Government interpreted this order to require that every denial of an interview request be supported by objective evidence and argued that such a requirement would invade the proper exercise of discretion by prison administrators and undercut their authority to respond to perceived threats to institutional security and order. Apparently responding to these concerns, the Court of Appeals deleted the references to "likelihood" and "probability" and recast the relevant portion of the order to the language quoted in the text. The thrust of the order remains however, that prison administrators must decide on an *ad hoc* basis whether to grant each particular request for an interview.

administrative or disciplinary problems." — F. 2d.  
at —.

The Bureau objects to the requirement of individual evaluation of interview requests. It argues that this approach would undermine inmate morale and discipline and occasion severe administrative difficulties. The line between a good-faith denial of an interview for legitimate reasons and a self-interested determination to avoid unfavorable publicity could prove perilously thin. Not unnaturally, prison administrators might tend to allow interviews with cooperative inmates and restrict press access to known critics of institutional policy and management. Denials that were in fact based on an administrator's honest perception of the risk to order and security might be interpreted by some inmates as evidence of bias and discrimination. Additionally, a policy requiring case-by-case evaluation of interview requests could subject the Bureau to widespread litigation of an especially debilitating nature. Unable to rely on a correct application of a general rule or policy authorizing denial, prison officials would be forced to an *ad hoc* defense of the merits of each decision before reviewing courts. In short, the Bureau argues that an individualized approach to press interviews is correctionally unsound and administratively burdensome.

This assessment of the difficulties associated with case-by-case evaluation of interview requests may seem overly pessimistic, but it is not without merit. In any event, this is the considered professional opinion of the responsible administrative authorities. They are entitled to make this judgment, and the courts are bound to respect their decision unless the Constitution commands otherwise. *Procunier v. Martinez*, *supra*. — U. S., at — (slip op., at 9). While I agree with the District Court and the Court of Appeals that the First Amendment re-

quires the Bureau to abandon its absolute ban against press interviews, I do not believe that it compels the adoption of a policy of *ad hoc* balancing of the competing interests involved in each request for an interview.

This conclusion follows from my analysis in Part II, *supra*, of the nature of the constitutional right at issue in this case. The absolute interview ban precludes accurate and effective reporting on prison conditions and inmate grievances and thereby substantially negates the ability of the news media to inform the public on those subjects. Because the interview ban significantly impairs the constitutional interest of the people in a free flow of information and ideas on the conduct of their Government, it is appropriate that the Bureau be put to a heavy burden of justification for that policy. But it does not follow that the Bureau is under the same heavy burden to justify any measure of control over press access to prison inmates. Governmental regulation that has no palpable impact on the underlying right of the public to the information needed to assert ultimate control over the political process is not subject to scrutiny under the First Amendment. Common sense and proper respect for the constitutional commitment of the affairs of state to the Legislative and Executive Branches should deter the Judiciary from chasing the right-of-access rainbows that an advocate's eye can spot in virtually all governmental actions. Governmental regulations should not be policed in the name of a "right to know" unless they significantly affect the societal function of the First Amendment. I therefore believe that a press interview policy that substantially accommodates the public's legitimate interest in a free flow of information and ideas about federal prisons should survive constitutional review. The balance should be struck between the absolute ban of the Bureau and an uninhibited license to interview at will.

Thus, the Bureau could meet its obligation under the First Amendment and protect its legitimate concern for effective penal administration by rules drawn to serve both purposes without undertaking to make an individual evaluation of every interview request. Certainly the Bureau may enforce reasonable time, place, and manner restrictions for press interviews. Such regulations already govern interviews of inmates by attorneys, clergymen, relatives, and friends. Their application to newsmen would present no great problems. To avoid media creation of "big wheels," the Bureau may limit the number of interviews of any given inmate within a specified time period. To minimize the adverse consequences of publicity concerning existing "big wheels," the Bureau may refuse to allow any interviews of a prisoner under temporary disciplinary sanction such as solitary confinement. And, of course, prison administrators should be empowered to suspend all press interviews during periods of institutional emergency. Such regulations would enable the Bureau to safeguard its legitimate interests without incurring the risks associated with administration of a wholly *ad hoc* interview policy.

A similar approach would allay another of the Bureau's principal concerns—the difficulty of determining who constitutes the press. The Bureau correctly points out that "the press" is a vague concept. Any individual who asserts an intention to convey information to others might plausibly claim to perform the function of the news media and insist that he receive the same access to prison inmates made available to accredited reporters. The Bureau is understandably reluctant to assume the responsibility for deciding such questions on case-by-case basis. Yet the Bureau already grants special mail privileges to members of the news media, and for that purpose it defines the press as follows: "A newspaper entitled to sec-

ond class mailing privileges, a magazine or periodical of general distribution; a national or international news service; a radio or television network or station." Policy Statement 1220.1A, § 4 (a). This regulation or one less all-inclusive could serve as an adequate basis for formulating a constitutionally acceptable interview policy. Allowing personal interviews of prison inmates by representatives of the news media, as so defined, would afford substantial opportunity for the public to be informed on the conduct of federal prisons. The fact that some individuals who may desire interviews will not fall within a broad and otherwise reasonable definition of the press should not present any constitutional difficulty.<sup>17</sup>

These comments are not intended to be exhaustive or to dictate correctional policy but only to indicate the broad contours of the approach that I think should be available to the Bureau. I would affirm that portion of the judgment of the District Court and the Court of Appeals that invalidates the absolute ban against prisoner-press interviews, but remand the case with instructions to allow the Bureau to devise a new policy in accordance with its own needs and with the guidelines set forth in this opinion.

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<sup>17</sup> The experience of prison systems that have generally allowed press interviews does not suggest that the Bureau would be flooded with interview requests. If, however, the number of requests were excessive, prison administrators would have to devise some scheme for allocating interviews among media representatives. I have assumed throughout this discussion that priority of request would control, but I do not mean to foreclose other possibilities. It is a fairly common practice for media representatives to form pools that allow many newsmen to participate, either in person or by proxy, in a news event for which press access is limited. The Bureau could certainly cooperate with the news media in the administration of such a program without favoritism or exclusivity to ensure widespread and dependable dissemination of information about our prisons.

## V

The Court's resolution of this case has the virtue of simplicity. Because the Bureau's interview ban does not restrict speech nor prohibit publication nor impose on the press any special disability, it is not susceptible to constitutional attack. This analysis delineates the outer boundaries of First Amendment concerns with unambiguous clarity. It obviates any need to enter the thicket of a particular factual context in order to determine the effect on First Amendment values of a nondiscriminatory restraint on press access to information. As attractive as this approach may appear, I cannot join it. I believe that we must look behind bright-line generalities, however sound they may seem in the abstract, and seek the meaning of First Amendment guarantees in light of the underlying realities of a particular environment. Indeed, if we are to preserve First Amendment values amid the complexities of a changing society, we can do no less.



